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**INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL
RELATING TO THE PRICE OF LOUISIANA SUGAR**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS
SECOND SESSION

ON

H. RES. 469

**Serial No. 21—Parts 1 to 5, inclusive
(Complete)**

APRIL 6, 7, 9, 13, 29, AND 30; MAY 1 AND 14, 1920



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HOUSE OF REPRESENTATIVES.

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INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL
RELATING TO THE PRICE OF LOUISIANA SUGAR.

SERIAL No. 21, PART 1.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,

HOUSE OF REPRESENTATIVES,

Washington, D. C., April 6, 1920.

The subcommittee assembled at 10 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. We will be glad to hear your statement now, Mr. Tinkham.

STATEMENT OF HON. GEORGE HOLDEN TINKHAM, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
MASSACHUSETTS.

Mr. TINKHAM. May I suggest, Mr. Chairman, that you read the resolution under which the committee is acting, for the purposes of the record.

Mr. HUSTED. It is not necessary to read it; but it will be inserted in the record at this point.

(The resolution referred to is as follows:)

[H. Res. 469, Sixty-sixth Congress, second session.]

Resolved, That the Committee on the Judiciary or any subcommittee thereof is hereby authorized and empowered to investigate in relation—

First. To the admitted concurrence of the Attorney General in a maximum, agreed, or fixed price of 17 cents for Louisiana clarified sugar at the plantation and of 18 cents for Louisiana clear granulated sugar at the plantation made in a telegram dated November 8 last to the United States attorney at New Orleans, Louisiana, or otherwise.

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Second. Whether directly or indirectly immunity from prosecutions under the statutes against profiteering in any way was given to Louisiana sugar growers or others in the sugar traffic in Louisiana.

Third. The facts and the authority of law, if any, upon which the Attorney General or his representatives or agents fixed, agreed, or concurred in the price of 17 cents for Louisiana clarified sugar at the plantation and of 18 cents for Louisiana clear granulated sugar at the plantation and how such facts were obtained.

Said committee shall report its conclusions to the House at the earliest possible date, together with such recommendations as it may deem proper and desirable to submit.

And said committee shall have power to send for persons and papers, and administer oaths, and shall have the right to report at any time.

Mr. TINKHAM. The questions involved in this investigation are:

First, the admitted concurrence of the Attorney General in a maximum agreed or fixed price of 17 cents for Louisiana clarified sugar at the plantation, and of 18 cents for Louisiana clear granulated sugar at the plantation, made in a telegram dated November 8 last, to the United States attorney at New Orleans, La.

Second, whether immunity from prosecution under the statutes against profiteering was given to Louisiana sugar growers, or others, in the sugar traffic in Louisiana.

Third, what authority of law the Attorney General had for these acts.

Fourth, what effect his action had, if any, upon the price of sugar, particularly in Cuba; and lastly, a misleading and false statement made by the Attorney General December 5th last, when he stated, in relation to the sugar question: "Congress, although requested to do so, has failed to extend the life of the board," meaning the Sugar Equalization Board.

As a base for the order of investigation, there were certain interrogatories passed by the House of Representatives December 18, 1919, and those interrogatories were as follows:

Resolved, That the Attorney General is hereby requested to report to the House of Representatives, forthwith—

(1) Whether he made, assented to, or approved in any way, of a price for Louisiana sugar on the plantation of 17 cents a pound for yellow clarified and 18 cents per pound for plantation granulated.

(2) Upon what authority of law he has fixed, or agreed that the price of Louisiana sugar on the plantation should be 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated.

(3) Whether it has been usual for the office of the Attorney General, in advance of legal action, to render an official opinion in relation to the United States criminal statutes and notify possible violators of his interpretation of them, and whether he notified Louisiana sugar producers that, under laws against profiteering, they would not be prosecuted if they sold yellow clarified at 17 cents per pound and plantation granulated at 18 cents per pound.

(4) The facts upon which he fixed or agreed upon the maximum price of 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated, and how these facts were obtained.

I want to offer an attested copy of those interrogatories.

Mr. SUMNERS. Would it interrupt you if I asked you a question at this point? I understood you to make a statement a moment ago about the effect of this upon the price of Cuban sugar. I have looked over the resolution rather casually and I was wondering what section of the resolution that comes under.

Mr. TINKHAM. The first part of the resolution says that the committee is empowered to investigate in relation, first, to the admitted concurrence of the Attorney General in a maximum, agreed, or fixed price—

Mr. SUMNERS (interposing). Perhaps I have not the correct resolution.

Mr. HUSTED. The resolution is House resolution 469.

Mr. TINKHAM. That is the first section, lines 4 to 9, page 1.

Mr. SUMNERS. Yes; I see.

Mr. TINKHAM. The committee is to investigate in relation to the admitted concurrence of the Attorney General. Now, any facts surrounding that, either which might immediately precede or which might subsequently follow, or which are involved in it, or which his admitted concurrence may have produced, it seems to me are perfectly competent. And therefore I want to offer later to the committee what I believe was the effect, without going too deeply into it, however.

You are asked to investigate that action, and, therefore, anything which might precede it or might be affected by that action, it seems to me, would be perfectly competent for the committee to consider.

If the committee thinks it has not the power under the resolution to accept this evidence I should suggest that the committee go to the House Committee on Rules and obtain an amendment to the resolution which would allow the consideration of that evidence.

Mr. HUSTED. I think under the form of the resolution, Mr. Tinkham, we have no authority to consider any consequential matters, but any facts leading up to the matter might be considered—

Mr. TINKHAM (interposing). Or any facts that might follow the matter would be competent, Mr. Chairman.

Mr. HUSTED. Well, I think any facts leading up to the determination of the Attorney General would be competent under the resolution.

Mr. TINKHAM. And would not the results that are claimed to have immediately flowed from his action, even if those facts were of an economic nature, be competent?

You are asked here to investigate as to this fact, namely, the admitted concurrence of the Attorney General, and then as to other things. Now, as long as you are asked to investigate as to this general fact it seems to me that facts leading up to it, or facts following it immediately—in other words, the effect of it—would be reasonably competent.

I also would say to the chairman that, when there is any doubt in relation to a statute or legislative enactment—and I suppose this may be called, in a way, a legislative enactment—that it is competent for even a court of law to examine the debates in order to understand the purpose; and in the debates which took place in relation to this resolution these two questions were raised:

One was as to the legal authority; and the other one as to the immediate economic effect, and particularly in relation to the Cuban crop.

I would suggest, if there is any doubt at all in the mind of the chairman as to whether it is not competent, that the question of the effect on the Cuban crop be considered, or the effect on sugar prices in the United States be considered, that he should go to the Committee on Rules and obtain authority so that these questions might be competent under this resolution; if there is any doubt in the minds of the committee, I hope that that will be done. I also want to say to the chairman that this, of course, is not a court of law, and a little greater discretion and latitude would consequently apply.

Mr. BOIES. So far as I am concerned, I would like to have the whole history of the matter and the facts on the sugar question.

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Mr. TINKHAM. It seems to me that that is competent; and it seems to me that that ought to be done in a general way.

Mr. CLASSON. I think the language of the resolution is pretty broad; it says, "To investigate in relation" to this matter.

Mr. HUSTED. You may proceed, Mr. Tinkham.

Mr. TINKHAM. I now want to offer the answer of the Attorney General to the interrogatories which I read a few moments ago. It is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., February 3, 1920.

To the House of Representatives of the United States:

In answer to the resolution of the House of Representatives, dated December 18, 1919, I beg to transmit the following:

1. As to paragraph 1, I beg to state that I neither made, assented to, nor approved the price for Louisiana sugar on the plantation of 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated.

2. As to paragraph 2, in view of my answer to paragraph 1, I deem no further answer necessary.

3. As to the first request in paragraph 3, I beg to state that it has not been usual for the office of the Attorney General in advance of legal action to render an official opinion in relation to the United States criminal statutes and notify possible violators of his interpretation of them, nor has it ever been done to my knowledge.

In answer to the second request in paragraph 3, I never notified the Louisiana sugar producers that under laws against profiteering they would not be prosecuted if they sold yellow clarified at 17 cents per pound and plantation granulated at 18 cents per pound.

4. In answer to paragraph 4, I beg to state that in the fall of 1919 this department was called upon to give some guide to the United States district attorney in New Orleans as to facts and circumstances which should be taken into consideration by him in beginning criminal prosecutions.

This implied a determination that, as a practical proposition, he might successfully contend in court, in the absence of particular circumstances that a sale of sugar above a reasonable, fair, maximum price for this year's Louisiana crop of sugar was an excessive price and therefore a violation of the Lever law. He had before him the fact that Louisiana sugar was selling in the open market at from 20 to 27 cents, that the crop was but 40 per cent of the normal, and that the price was rapidly mounting.

It was the opinion of the department that all these factors would be taken into consideration by the court in considering any prosecutions, and that prosecutions begun in disregard of such considerations would offer no prospect of eventual success.

On November 7, 1919, the United States district attorney in New Orleans wired the Attorney General as follows:

"NEW ORLEANS, LA., November 7, 1919.

"ATTORNEY GENERAL,

"Washington, D. C.:

"After a protracted meeting with the sugar planters their committee agreed to a fair price of 17 cents per pound for prime yellow clarified sugar, net on plantation, with 1 cent additional per pound for choice plantation granulated; intermediate grades in proportion. The committee further recommended that all sales where delivery has begun by evidence of bills of lading shall stand, but recommended that all contracts for a higher figure be abrogated in fairness to all producers and manufacturers whose action in making contracts has been delayed by deference to authorities. Prime yellow clarified sold on the open market in New Orleans yesterday at 20½ cents, market virtually bare, with ready buyers for all sugar of that grade at that price. My session with the planters was a protracted one and was held after I had talked to many of the leading consumers and obtained their views. The committee itself was composed largely of the most conservative element of planters, yet there was only one member of the committee originally consenting to the 17 cents suggestion, all other members holding for a higher price because of the admitted short crop and low sugar yield. Stating in this connection that such cane as had passed through the mill showed an unusually poor yield of sugar, making estimates of production made a week ago high, and indicates losses to many even at prices agreed. I have sought the very best sources of advice in this matter and have reached conclusion that the 17 cents agreed upon is reasonable and recommend that the department accept it. I have reached this conclusion because 17 cents as a maximum price does not carry with it any guaranty that the entire crop can be disposed of at that figure and it is

probable that the average for the crop would be considerably less. I have before me your telegram 6th referring to willingness of conference committee to accept 14 or 15 cents as price for entire crop. I had this fact in mind when I wired you November 3, but as Government is not in a position to guarantee the producer any fixed price for his crop and is necessarily limited to establishing a fair price, which virtually means maximum price, it would be impossible to secure consent of planters to fix the fair average price as a maximum price because of the vast difference existing between maximum price and average price for crop. I believe the action of the planters yesterday represents the extreme limit of their concessions, although they met me in a conciliatory spirit. Sincerely hope that maximum price suggested may be acceptable to the department. Please instruct me by wire.

"MOONEY,
"United States Attorney."

On November 8, 1919, the following telegram was sent:

"MOONEY,
"United States Attorney, New Orleans, La.

"Your wire of the 8th, detailing results of conference. Consider agreed price rather high, but hereby concur in maximum fixed price of 17 cents for Louisiana plantation clarifieds, 18 cents for Louisiana clear granulated. Understanding that all contracts for a higher figure to be abrogated. Further suggest, if possible, you secure an agreement in writing by authorized committee of Louisiana producers and refiners to be used as prima facie evidence where prices are charged in excess of agreement. You are hereby instructed to immediately prosecute any violator of this agreed price.

"PALMER."

These telgrams do not at all mean that we fixed the price, but do mean that, under all the special circumstances existing as to the Louisiana crops, this department was willing to concede that prosecutions would be ineffectual and unsuccessful if based upon a contention that any price less than 17 cents for yellow clarified and 18 cents per pound for plantation granulated was an "excessive price" under the Lever law. Respectfully submitted.

A. MITCHELL PALMER,
Attorney General.

Now, I want to take up the interrogatories seriatum.

The first interrogatory is, whether he made, assented to, or approved in any way of a price for Louisiana sugar on the plantation of 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated.

His answer is:

As to paragraph 1, I beg to state that I neither made, assented to, nor approved the price for Louisiana sugar on the plantation of 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated.

You will note that he did not say "in any way"; in other words, the answer to that interrogatory is not responsive; he omitted the words "in any way."

And his answer to the second interrogatory is:

As to paragraph 2, in view of my answer to paragraph 1, I deem no further answer necessary.

This answer to the second interrogatory, in my opinion, discloses why he omitted the words "in any way," as well as his telegram, the effect of which I shall comment on.

Now, his telegram—and that is the principal subject of investigation—I have read to you. Although he states that he did not assent to, or approve, or make any price for Louisiana sugar, I submit that he could have done it in no more effective, and in no more coercive, and in no more complete way than he did in that telegram in which he stated that a prima facie case was to be made. For a United States attorney to say that a prima facie case was to be made was to

say that anyone who sells in excess of that figure would be immediately prosecuted by the Federal Government.

He went beyond the mere fixing of a price. He added, I might say, the coercive power of the criminal court back of the price of 17 and 18 cents, because he established what was a *prima facie* case, or, in other words, a case where, if a man sold in excess of that price, it would be a crime.

In other words, I claim that, to any fair mind, the telegram was the fixing of a price. You may say that he concurred, as he says in this telegram himself, in a fixed price; but it was the fixing, and the fixing in the most coercive way, of a price for that sugar.

Mr. WHALEY. Would you mind being interrupted by a question right at this point?

Mr. TINKHAM. I should not.

Mr. WHALEY. Admitting that to be true, what is your further contention? Suppose he did fix a price; what is your contention?

Mr. TINKHAM. My contention is that he had no authority, first, to fix a price; second, to establish a *prima facie* case. In other words, he acted entirely without authority.

Mr. WHALEY. Well, do you go on further, and say that, because he acted in that way the people of the country lost money, or that they made money?

Mr. TINKHAM. I shall prove, I think, in the end, most conclusively that they lost money—many tens of millions, if not hundreds of millions, of dollars—by his action and the nonaction of the President in the purchase of the Cuban sugar crop of 1920.

Now, in relation to the action of the committee, I believe that the committee should call for that agreement which the Attorney General says be made with the producers.

I also believe that the committee should call for the telegram which is spoken of in Mr. Mooney's telegram of November 7; and there is also evidence that there were written communications by the Attorney General in relation to this very matter, and by Mr. Mooney; and I believe that those written communications should be asked for. It seems to me that the committee can not fully understand this case and know the vital parts of it, unless it has all papers and all documents in relation to the fixing of this price.

Interrogatory 2 raises the question of what authority of law the Attorney General acted under, and it reads as follows:

Upon what authority of law he has fixed or agreed that the price of Louisiana sugar on the plantation should be 17 cents per pound for yellow clarified, and 18 cents per pound for plantation granulated?

His answer here is:

As to paragraph 2, in view of my answer to paragraph 1, I deem no further answer necessary.

In other words, he not having responded, or his first answer not being responsive; he then entirely avoids disclosing the authority which then was the gist of these interrogatories.

I read to the Committee on the Judiciary in December when the interrogatories were propounded his telegram; so that that was not new. But the question involved, the real question, was, What was his authority? And as you see, by his answer to interrogatory 2, he not having given a responsive answer to interrogatory 1, he said, "In view

of my answer to paragraph 1, I deem no further answer necessary." As to his authority, I want the committee to take judicial notice that neither under the Revised Statutes, sections 346 and 387, which establish the office of the Attorney General and prescribe his duties, nor under any acts in amendment thereof, is any such authority given as he has exercised.

I am not going to offer the statutes in evidence; but I hope the committee will take judicial notice of what the statutes contain, and that my statement is true.

Now, if that is so, then the only act that he could have obtained any power under was the so-called Lever Act and the amendments passed thereto at this session of Congress.

Under the so-called Lever Act, or the food-control act, there is no authority to fix prices, except in the quite limited way that I am now going to refer to: First, section 11 of the Lever Act, or the food-control act, gives authority to the Government to buy necessities, and, of course, to sell them at any fixed prices.

There is no such problem involved here; there was no purchase of Louisiana sugar by the Government.

Section 14 of the Lever Act gives the President the right to guarantee the price of wheat, to buy wheat, and sell it at a fixed price. But this is sugar, and not wheat.

Section 25 of the act gives the President the right to fix, under certain conditions, the price of coal and coke. We are dealing with sugar.

Section 27 of the act gives the President the power to purchase nitrate of soda, and the right to sell and fix the price of same.

Those sections were the only sections that gave the Government, or any official of the Government, the right to fix prices of commodities but by section 5, which was used to regulate the price of food, the President was given the power to license manufacturers, importers, and distributors of necessities. This power was to be used only after the issuance of a proclamation; first, the President must issue a proclamation as to requiring licenses, and then no person could engage in any such business, except under Federal license. The President under this section was given the power to prevent any unfair profits; so that in this way, prices could have been and were legally controlled.

The amendment to the food control act gave no additional price-fixing powers; but it merely gave more complete power to prosecute profiteers as criminal offenders. And those amendments were passed upon the request of the Attorney General, and as I understand it, in the form that the Attorney General wanted.

I offer the Lever Act and the amendments thereto in evidence.

Mr. WHALEY. Your contention, then, is that the Lever Act gave no power to fix prices on sugar?

Mr. TINKHAM. The Lever Act gave no power to fix the price of sugar; that is my contention; that even during the war it gave no power to fix the price of sugar, except in an indirect way, by saying that a man that was licensed to engage in the business for the sale of necessities—that if he charged an unfair profit, his license would be taken away from him. That is the only way, even during the war, in which food control was exercised by the President or the Government.

Mr. HUSTED. And no licenses were issued in this case?

Mr. TINKHAM. No licenses were issued in this case.

Mr. WHALEY. What I want to get at is that under the Lever Act, your contention is that there was no power for the Government to buy, and no power for it to fix the price of sugar.

Mr. TINKHAM. There was a power, if the Government wanted to buy sugar—

Mr. WHALEY. Do you find that power in that act?

Mr. TINKHAM. Yes.

Mr. WHALEY. In what section is it?

Mr. TINKHAM. In section 11, as follows:

SEC. 11. That the President is authorized from time to time to purchase, to store, to provide storage facilities for and to sell for cash, at reasonable prices, wheat, flour, meal, beans, and potatoes: *Provided*, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section 14 of this act, then the price paid for any such articles so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessities under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

Section 12 reads as follows:

That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil-pipe line, mine, or other plant, or any part thereof, in or through which any necessities are or may be manufactured, produced, prepared, or mined, and to operate the same.

That would apply to refineries, of course, although it does not state, as I was under the impression it did, that the Government could buy sugar; it says that the President can purchase wheat, flour, meal, beans, and potatoes; and then it says that he can take over any factory or refinery.

Mr. HUSTED. Well, as a matter of fact, the Government did purchase sugar under that act when it bought the crop of 1919, did it not?

Mr. TINKHAM. Yes, it did.

Mr. WHALEY. Well, as a matter of fact, it did that in 1918.

Mr. TINKHAM. Yes; the Government purchased sugar in 1918.

Mr. WHALEY. But they did not buy it in 1919?

Mr. HUSTED. They bought the crop of 1919 in 1918.

Mr. TINKHAM. Yes.

Mr. WHALEY. Yes, I know; but they bought sugar in 1918; and you tried to get them to buy it in 1919, by your resolution, did you not?

Mr. TINKHAM. I did not have any such resolution.

Mr. WHALEY. Did you not have a resolution on June 30, 1919, in relation to the purchase of sugar?

Mr. TINKHAM. I had a resolution asking the Federal Trade Commission to make an investigation of the scarcity of sugar and the price of sugar.

Mr. WHALEY. Did you not, about that time make a speech on the floor of the House, advocating that the President should buy the Cuban crop?

Mr. TINKHAM. At that time?

Mr. WHALEY. Yes; or did you not deliver a speech on the floor of the House advocating that the President buy the crop in 1919?

Mr. TINKHAM. That is true.

Mr. WHALEY. Did you not censure him because he did not buy the crop in 1919; and yet you say now that he had no authority to do it?

Mr. TINKHAM. Well, I do not quite follow you.

Mr. WHALEY. It is as plain as day, is it not?

Mr. TINKHAM. Let me explain the right of the Government to purchase, and the Cuban crop situation. Under this section of the act, the Sugar Equalization Board was created by the President; it was given \$5,000,000, and was told by the President, who was the sole stockholder, to purchase all sugar that was necessary in order to control the prices.

Mr. WHALEY. When was that?

Mr. TINKHAM. That was done in 1918.

Mr. WHALEY. Well, there is quite a difference between the war and the peace period, is there not?

Mr. TINKHAM. Exactly. Now, pursuant to that, this Equalization Board was created; and they purchased the Louisiana crop of 1919; that is last year's crop.

Mr. WHALEY. That was in 1918?

Mr. TINKHAM. That was in 1918; and they purchased the beet-sugar crop; and then they purchased the Cuban crop at 5½ cents, and equalized the price, because they paid much more than 5½ cents for the beet sugar and for the Louisiana sugar; and they made contracts with the refineries, and the refineries then sold only to the licensed dealers. As you will see, the methods of the food control were organized under this act. And in July this board, which was still in operation and was controlling through the sugar they had purchased—

Mr. WHALEY (interposing). In July of what year?

Mr. TINKHAM. July of 1919; it recommended to the President that he purchase the coming crop—the 1920 Cuban sugar crop. The board stated that their studies disclosed a great shortage in the world crop or supply and that there would be a great shortage in the United States, and that the price of sugar would rise to most unusual and unheard of heights. They said that at that time they had an understanding with the Cuban Government, or Cuban commissioners, by which the transaction could be carried through, as it was in 1918, at a price probably of 6½ cents.

Their letter was acknowledged, but they were given no authority, and the President did not indicate his course, except so far as not authorizing the action recommended was concerned.

Mr. BOIES. Will you put into the record the evidence of this, Mr. Tinkham? Will you put into the record the full statement as to this, so that we will have that in addition to your own statement in connection with it?

Mr. TINKHAM. I think perhaps the best way to do that would be to offer the minutes of the hearings before the Senate Committee on Agriculture in October, when all the facts were brought out; I have those minutes here, and will be very glad to offer them to the committee.

Then, in September, again, the Equalization Board recommended to the President that the crop be purchased, and again there was no response from the President.

Mr. WHALEY. Let me ask you right there: The Army had been demobilized then, and the armistice had been signed?

Mr. TINKHAM. It had.

Mr. WHALEY. In your opinion, was it necessary for the national defense, at such time, to exercise such power? For the national defense, I am speaking of now?

Mr. TINKHAM. I do not know that it was for the national defense, using the words strictly and exactly.

Mr. HUSTED. Was it not the contention of the national administration that in 1919 the President was clothed with the war power as much as he was in 1918?

Mr. TINKHAM. Up to this moment, the President is as much clothed with every war power which he possessed during the war as he was at any moment during actual hostilities.

Mr. WHALEY. But in your opinion, you do not think we are at war now, do you?

Mr. TINKHAM. Well, we are surely not at peace.

Mr. WHALEY. You do not think so? And you think the President would be justified in exercising all the powers that we have given him in these laws in war times?

Mr. TINKHAM. Well, I think that if, by a very simple operation which had proved very efficacious in 1918, the sum of \$900,000,000 in the cost of living would have been saved to the American people, it should have been done, particularly when the way had been blazed by the operations of the year before. I do not say that I believe that every war power should be exercised; and I do not know but what I should, perhaps, say that sugar would have to stand upon its *own* basis, because it is so completely and so effectively controlled—more so, as I understand it, than any other commodity over which the Government took control; and I, perhaps, would put it on an exceptional basis; but I am quite sure that it would have been a very beneficial thing, in the light of experience, if sugar could have been held by authorization of the President, for the purchase of the Cuban crop at 11 cents, 1 cent more than it was in 1919, rather than have it go, as we have seen it go, from 16 and 18 to 20 and 22 cents, with the promise that it may go to 25 cents in May and June.

Mr. WHALEY. Suppose there was a scarcity in sugar now, do you think the President would be justified in exercising the war powers of 1918?

Mr. TINKHAM. I think it is too late to act now.

Mr. WHALEY. I am taking a hypothetical case: Suppose there was a scarcity of sugar to-day, would the President be justified in exercising the power given him in that act in war time, and buying the sugar of next year's crop?

Mr. TINKHAM. That would depend upon all the circumstances and all the facts. Of course, the further away from the war, the less justification would exist.

Mr. WHALEY. Well, you would still have the scarcity, would you not?

Mr. TINKHAM. We would still have the scarcity.

Mr. WHALEY. And you would still have the need of the people, would you not?

Mr. TINKHAM. Yes.

Mr. WHALEY. And you would still have the high prices, would you not?

Mr. TINKHAM. Yes.

Mr. WHALEY. And you might save the people some money in that way?

Mr. TINKHAM. Yes.

Mr. WHALEY. Do you not think, under your contention, that he ought to exercise the war power now?

Mr. TINKHAM. I do not think there is as much justification for it now, because we have gone further away from the war than we were six or seven months ago.

Mr. WHALEY. Of course, he would be spending the people's money if he did that.

Mr. TINKHAM. It could not be done to-day, because the Cuban crop has been out of control since last September.

Mr. WHALEY. It would be a new crop?

Mr. TINKHAM. Yes.

Mr. HUSTED. Do you think the executive branch of the Government had any more authority in the year 1919 to fix the price of sugar than it did to purchase sugar?

Mr. TINKHAM. I think that the legal power to-day or in September or in June—if this answers your question—was as complete as it was during any moment when hostilities were going on.

Mr. HUSTED. Mr. Whaley contends, as I understand it, that even though the President might have been technically authorized, due to the fact that no treaty of peace has been entered into, to purchase the sugar under the war power, that he had no moral right to exercise that authority, because, as a matter of fact, we were at peace with Germany; the war was really over. Now, if that contention is correct, it seems to me that it follows logically that he certainly had no moral right, either directly or through any authorized agent of the Government, to fix a price under the war power.

Mr. WHALEY. But the chairman has got me wrong. The answer to his question is all right, if his premises are right; but his premises are wrong. My contention is that the President had no moral right, and therefore he could not do as he pleased; it would be morally wrong for him to do it. My contention is that under the Lever Act he could only purchase for the national defense, under the wording of that act. And that meant when we were in actual war; and therefore, the war having terminated and the Army having been demobilized, then it was not for the national defense, and he could not exercise it under the war power.

Mr. TINKHAM. It was under the Lever Act that the Attorney General went to the courts of Ohio and obtained an injunction, and it was under the Lever Act that other things have been done as a precedent—

Mr. WHALEY (interposing). Would you mind reading section 12 of the Lever Act again in the testimony?

Mr. BOIES. Before you do that let me ask you a question: Is it not the contention of Congress at this time and of the Executive that it would not be well to repeal the laws giving the Executive these extraordinary powers, in the interests of the people of the country to-day?

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Mr. TINKHAM. Some take that position.

Mr. WHALEY. But that has never been expressed by resolution?

Mr. TINKHAM. No.

Mr. WHALEY. That is just the personal opinion of the gentleman from Iowa and of other people who are Members of Congress.

Mr. TINKHAM. Would you like me to read section 12 of the Lever Act again?

Mr. WHALEY. Yes; if you will.

Mr. TINKHAM. Section 12 is rather a long section.

Mr. WHALEY. You can read just as to the purchasing power.

Mr. TINKHAM (reading):

SEC. 12. That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or other plant, or any part thereof, in or through which any necessities are or may be manufactured, produced, prepared, or mined, and to operate the same. Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof.

Now, of course, there are other sections in this act besides that; but you asked me particularly about that section.

Mr. WHALEY. Is there anything in there in relation to the purchasing power of the President? If there is, I should like to have that put in the record.

Mr. TINKHAM. Section 14 gives the President authority to guarantee the price of wheat and sell it; and section 25 gives the President the right to fix, under certain conditions, the prices of coal and coke. Section 27 gives the President power to purchase nitrate of soda, and fix the price at which it shall be sold.

Mr. WHALEY. But there is nothing in the Lever Act, except section 12, which gives him the power to buy sugar?

Mr. TINKHAM. No; except—let me read, so that this may be made clear—the beginning of the Lever Act. The first section of the Lever Act is as follows:

That, by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement of foods, feeds, fuel including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution and movement; and to establish and maintain governmental instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions, hereinafter set forth, are created, established, conferred, and prescribed. The President is authorized to make such regulations, and to issue such orders, as are essential effectively to carry out the provisions of this act.

Under that section the equalization board, during the war, was created, purchased the Cuban crop of 1919, and kept the price at 10 cents; and they recommended this year, peace not having been declared, that as sugar was a commodity that could be most completely and effectively controlled, and as there was going to be a great scarcity of sugar and the price would go to most unusual heights, the President should exercise his legal and technical author-

ity. If he had, there is no question but what there would have been about \$900,000,000 saved to the American people.

Mr. SUMNERS. In order for him to have done that, he would have had to determine, under the language of the food-control act, that it was necessary for the national defense, would he not?

Mr. TINKHAM. Well, I think not; he had the board established.

Mr. SUMNERS. Yes.

Mr. TINKHAM. And all he had to do was to authorize them, peace not having been declared——

Mr. SUMNERS. (interposing). But I understand that, in the preamble of the bill to which you refer, it depends upon whether the President shall determine that it is necessary for the national defense, or for the supply of the Army; then he may do certain things that Congress places in him the discretionary power to do. Is that correct?

Mr. TINKHAM. It says "the national security and defense;" but that national security and defense might last until the peace, of course, is signed.

Mr. SUMNERS. Yes; but he would have had to find, as a matter of fact, that this thing was necessary for the national security and defense. Now, do you claim that it was necessary for the national security and defense for this to have been done?

Mr. TINKHAM. It was necessary for the national security and defense against the increasing cost of living, I should say.

Mr. SUMNERS. Do you understand that that legislation was to give the President the power to carry on the war, or to carry on the fight against high prices in peace times?

Mr. TINKHAM. Technically, we have not peace yet.

Mr. SUMNERS. I understand that; but the President would have to find that a given act, as I understand that law, was necessary for the national defense; is that not right? Is that not the plain language of the law?

Mr. TINKHAM. That is what the law says in that section.

Mr. SUMNERS. Well, you are criticizing the Attorney General in this resolution; now, do you claim, as a matter of fact, that it was necessary at that time for the national defense, to buy the sugar crop?

Mr. TINKHAM. Well, as I say, it depends on what you call the national defense. He had the legal right, peace not having been declared.

Mr. SUMNERS. No; it does not. I am talking about you now; you are a Member of Congress; and you have to help in enacting these laws; and you stand before this subcommittee now, and you charge that the President should have exercised this power, because it was necessary for the national defense at that time?

Mr. TINKHAM. I think if peace had not been declared, and if I had the power, that I should have exercised it just as much as he exercised it in the Ohio courts when he obtained an injunction which could not have been obtained except under the authority of this act.

Mr. SUMNERS. Well, you would not——

Mr. TINKHAM (interposing). Please let me finish. I would like to say this. I want to be fair about it, and to answer your question.

Mr. SUMNERS. Very well; I will be glad to have you answer it.

Mr. TINKHAM. The Lever Act is in effect until the peace is declared or until a treaty has been signed. Under the Lever Act the country

has been operating and the executive departments are using that act and enforcing it wherever necessary; and it seems to me that in the matter of the purchase of the Cuban crop it could be as fairly exercised as it could be in other directions.

Mr. SUMNERS. Well, Mr. Tinkham, let me interrupt you just a minute. As I understand that act, the right to exercise any of the powers conferred by the act is conditional upon a predetermination that the exercise of that power is necessary for the national defense. Now, is that not the plain language of the act?

Mr. TINKHAM. That is what it says in that section; there is no question about that.

Mr. HUSTED. Well, this resolution is not so much concerned with the power of the President to purchase sugar as it is with the fixing of the price of sugar.

Now, I would like to ask the gentleman whether the President had more authority under the Lever Act, or under any other act, to fix the price of sugar in 1919 than he had to purchase sugar?

Mr. TINKHAM. I do not know that I quite understand the chairman's question.

Mr. HUSTED. Did the President have any more authority under the Lever Act, or any other act, to fix the price of sugar in 1919 than he did to purchase sugar?

Mr. TINKHAM. Well, I think he had the right—

Mr. HUSTED (interposing). Did he have any greater authority to fix the price than he did to buy under the Lever Act, or under any other act?

Mr. TINKHAM. As I understand the Lever Act, he had the right, through the Sugar Equalization Board, which was a creation under the Lever Act, to purchase sugar, and through the system of licensing he had the right to take away a license if a man charged an exorbitant price for sugar which had been delivered to him from Government sources; but he had no right to say that the price of sugar shall be at a certain fixed figure. Does that answer your question?

Mr. HUSTED. No; it does not answer my question.

Mr. TINKHAM. I do not quite understand the question.

Mr. HUSTED. Perhaps I did not express myself clearly. The gentleman from South Carolina contends that the President had no authority in 1919 to purchase sugar, because it was not necessary for the common defense at that time. Now, did the President have any more authority in 1919 to fix the price of sugar—did he have any greater authority to fix the price of sugar—than he did to buy sugar? Is there any provision of the act under which he could justify the fixing of the price of sugar, even if he could not justify the purchase of sugar, upon the grounds stated by the gentleman from South Carolina?

Mr. TINKHAM. No.

Mr. BOIES. The effort of the Attorney General to act as part of the executive, or of the Government, in attempting to fix the price of sugar was supposed to be in the interests of the people of this country, was it not?

Mr. TINKHAM. It was supposed to be.

Mr. BOIES. Does it not necessarily follow that, looking to the interests of the people of this country, the Executive ought to have bought this sugar?

Mr. TINKHAM. That is my position and my opinion.

Mr. WHALEY. Irrespective of whether he had the power or not, is that your position?

Mr. TINKHAM. Not at all. I think he had the power.

Mr. WHALEY. You think he had the power? Do you think he has the power to-day?

Mr. TINKHAM. I do. He is exercising, in many directions, powers under this act.

Mr. WHALEY. Well, do you think that is a good power to give him?

Mr. TINKHAM. That is a matter of judgment and opinion.

Mr. WHALEY. Well, I am asking for your judgment and opinion; you are a witness—

Mr. TINKHAM (interposing). I am not the President.

Mr. WHALEY. But you are a witness before this committee now, and we would like to get your opinion on that question.

Mr. TINKHAM. Well, I should say that, where it may be clearly said that the public interest is plainly served, then that technical powers should be used, both to protect the public in one direction, and to benefit and assist them in another.

Mr. WHALEY. Then, in your opinion, it is a good power for the President to possess?

Mr. TINKHAM. Perpetually? No; I take it—

Mr. WHALEY (interposing). Until peace is declared?

Mr. TINKHAM. I think we have come to a period now when these war powers should be taken away.

Mr. WHALEY. You do?

Mr. TINKHAM. Because the period now, between the armistice and the after effects of the war—the vital period—has really passed, we should return to normal conditions, as nearly as is possible. But I want to reiterate that I think, under all the circumstances and in view of all the operations and instrumentalities which have been so successful—this thing having been more successfully under control than any commodity, according to all experts—I think that there would be a tremendous saving in the cost of living if this power had been exercised; although I think it is a little bit of an exceptional case, I am willing to admit.

Mr. WHALEY. Do you think the President ought to fix prices to-day?

Mr. TINKHAM. Do I think the President ought to fix prices to-day?

Mr. WHALEY. Yes.

Mr. TINKHAM. I do not.

Mr. WHALEY. But if he had purchased the Cuban crop in 1919, he would have to fix the prices now, would he not?

Mr. TINKHAM. That is true.

Mr. WHALEY. And the prices would have been fixed now if he had done that, would they not?

Mr. TINKHAM. They would have been fixed in the sense that they would be very much lower; yes.

Mr. WHALEY. And therefore you do not think he ought to have done it, if he had to fix the prices to-day?

Mr. TINKHAM. I think what was sound six or seven months ago might not be sound to-day; in other words, it is a question of how long, after the armistice, you are justified in exercising—how far it is necessary to exercise war powers. There may be war powers that are very proper and necessary to exercise 60 days, or six months

after the war, because the war produced conditions that were most abnormal; the war powers were granted by Congress in order to meet those conditions produced by the war; and six months from that time, or a year from that time, you would not be justified in using those powers; it is all a matter of discretion and judgment, not a matter of whether it is lawful or unlawful. There is no question about the lawfulness of operating under those laws.

Mr. HUSTED. Do you think it would be at all a question of whether the conditions were unusual, extraordinary, and flowed directly from the war?

Mr. TINKHAM. That, I think, is the actual test of the use of the war power.

Mr. SUMNERS. On that point, if he had purchased this sugar in 1919, actual hostilities having ended, the sugar crop would not have been ready for distribution at that time; and it would have had to be in contemplation that the sugar crop would be ready for distribution later—

Mr. TINKHAM (interposing). It would have been ready for distribution about the 1st of January.

Mr. SUMNERS. Of 1920?

Mr. TINKHAM. 1920.

Mr. SUMNERS. It is just in process of distribution now?

Mr. TINKHAM. Yes.

Mr. SUMNERS. Now, you said a moment ago that you were not President, but if you had been President in 1919, clothed with the responsibility of executing the laws, would you have found in 1919 that the purchase of this sugar crop was necessary for the public defense at that time—when you went back in your private office to think that all out?

Mr. TINKHAM. As I view this question—

Mr. SUMNERS (interposing). Well, can you not give me an answer to that question?

Mr. TINKHAM. I do not want to evade it. If I had the power, and it was brought to my attention that the price of sugar could be so easily and successfully controlled, as was demonstrated in 1919; and if I knew that the market for sugar would rise, doubling in price, when times were most disturbed economically, and there was great complaint against the cost of living; and I found that I legally had that authority, I think I would have exercised it.

Mr. SUMNERS. Whether you determined it was necessary for the national defense or not?

Mr. TINKHAM. Just as the President exercised the power under the Lever Act—

Mr. SUMNERS. I am not talking about the President now; I am talking about you.

Mr. TINKHAM. The President exercised power under the Lever Act in the coal strike, and in many other directions; he thought those cases justified the action; and I suppose if I thought I had the legal right, I should have exercised it.

Mr. HUSTED. Well, the question of the National defense; is not that the basis of all war power, whether it is written into the statutes or not?

Mr. TINKHAM. I think so; that is the essence of it.

Mr. HUSTED. And is not that argument just as much applicable to the exercise of the war power in any other direction as it would be to the purchase of the Cuban crop of sugar?

Mr. TINKHAM. It seems to me so, Mr. Chairman; and on the other hand, if it was not justifiable as an exercise of the national defense in that case——

Mr. HUSTED (interposing). Is the exercise of the war power at this time or in 1919 justifiable in any such case?

Mr. TINKHAM. I think it would be justified in accordance with the facts and the necessity.

Mr. HUSTED. In other words, is that not merely technical language, which simply sets forth a little more fully the nature of the war power?

Mr. TINKHAM. Yes; I should think that was so. I brought the Lever Act to the attention of the committee, simply as evidence of a lack of authority in the Attorney General to do what he did in Louisiana. I did not want to discuss the policy of the President, and I do not pretend to be an expert on the Lever law as a whole.

Mr. BOIES. Under the Lever Act, does the President have authority to fix the price of sugar?

Mr. TINKHAM. He had not, except in the way I have indicated.

Mr. BOIES. But he had in that way?

Mr. TINKHAM. He had in that way.

Mr. BOIES. Well, if you were President of the United States, or were, at that time, would you have sought to fix the price of sugar as Mr. Palmer sought to fix it, or would you have resorted to your other practical right of buying the sugar and controlling it in that way?

Mr. TINKHAM. Having the complete control—if I did—of the administrative forces of the Government, I should have believed in the policy of the purchase of the Cuban crop; and I surely would not have done what Attorney General Palmer did, because Mr. Palmer had absolutely no authority to do as he did in Louisiana——

Mr. BOIES (interposing). But, if you were acting as the President, having authority to exercise either of those powers, technically—would you have exercised the authority by attempting to fix the price of sugar in this way, or would you have tried to keep it down by the purchase of the sugar crop?

Mr. TINKHAM. The latter, of course.

Mr. SUMNER. If the exercise of this power by the President was required by the obligations which he owed the American people, then the conditions not having changed, in so far as the scarcity of the product is concerned, and the volume of the demand, is it not the duty of Congress to clothe the President with the clear power to exercise, and to continue to exercise, this purchasing and licensing power of the Government?

Mr. TINKHAM. I do not believe in an undue interference with the natural operation of economic laws, except under extraordinary and exceptional and distressing circumstances.

Mr. SUMNER. Well, have we not that kind of circumstances now?

Mr. TINKHAM. No; I think not. I think, in the future, you will find that the sugar question will solve itself; but it will not solve itself during 1920.

Mr. HUSTED. Well, the railroads were taken over under the war power, for the national defense, were they not?

Mr. TINKHAM. They were.

Mr. HUSTED. And the Government control continued until 1919, did it not?

Mr. TINKHAM. It did. And many other war powers have been exercised since the armistice; and gradually, as the situations develop, many things are being released from Government war control; it is all a question of judgment, where you are going to draw your line.

Mr. HUSTED. Had the Attorney General been clothed by the President with any war power at the time that he concurred in the prices of sugar which had been arranged—

Mr. TINKHAM (interposing). On November 8, 1919.

Mr. HUSTED (continuing). Arranged between District Attorney Mooney and the producers in Louisiana?

Mr. TINKHAM. He had not, so far as I can find in the records.

Mr. WHALEY. You are not in favor of the principle of the Government fixation of prices?

Mr. TINKHAM. I am not, except in great emergencies and in war.

Mr. WHALEY. And you would not feel that Congress would be justified in passing any law to fix the price of any commodity, or authorizing the Executive to fix the price of any commodity, because of the scarcity of that commodity and the rising prices, would you?

Mr. TINKHAM. As a permanent policy?

Mr. WHALEY. Well, as a temporary policy, in times of peace?

Mr. TINKHAM. There might be a situation—I should not want to detail what it might be—where there were such exceptional and unusual circumstances and such a national and widespread distress that some measure of immediate relief might be necessary. But as a principle, of course, I do not believe for a moment in price fixing or the arbitrary direction of economic laws and economic forces. I think you had an exceptional case here, which, with advantage could have been lawfully controlled by the Government.

Mr. WHALEY. Well, if an exceptional case should arise to-morrow, or next year, would you vote for Congress to give the President power to take over that commodity?

Mr. TINKHAM. I do not want to theorize; I do not want to say that, under no situation, and under no set of circumstances, would I do it. I am willing to say that I do not believe in the fixing of prices, because I believe, in the first place, that it could not be successful in the final analysis; and in the second place, I do not believe it is justified.

Mr. HUSTED. Well, your contention in this case, as I understood it, was, in the first place, that the fixing of the prices was not justifiable, on any ground, by the Attorney General, even in 1919.

Mr. TINKHAM. My contention in relation to the particular question before the committee is this: Not only was it unauthorized and illegal for the Attorney General to fix the prices, but the result of his fixing the prices was most disastrous.

Mr. SUMNERS. If the President is to be criticized for not having exercised a questionable power in fixing the prices, why do we criticize the Attorney General for trying to exercise the power to fix the prices?

Mr. TINKHAM. One was a perfectly legal thing for the President to do, and would have brought a benefit if done; the other was an

illegal thing for the Attorney General to do, was unsound, and produced exactly the opposite results.

Mr. SUMNERS. Now, as a matter of fact, in justice to the President, would not the President have been compelled to find as a fact that which was not a fact in order to do that?

Mr. TINKHAM. I do not think so.

Mr. SUMNERS. And to find that it was necessary for the national defense?

Mr. TINKHAM. Not any more than he did in the Ohio injunction case, or in other actions taken under the Lever Act.

Mr. BOIES. And are in operation to-day?

Mr. TINKHAM. And are in operation to-day.

Mr. HUSTED. Now, you may proceed with your main case.

Mr. TINKHAM. I offered the Lever Act merely to show that there was no authority in the Attorney General to do what he did.

Mr. HUSTED. You did not introduce any resolution in Congress requiring the President to exercise any authority, did you?

Mr. TINKHAM. In relation to sugar?

Mr. HUSTED. Yes.

Mr. TINKHAM. No. May I explain the situation, Mr. Chairman?

Mr. HUSTED. Yes. I just want to get at whether you had introduced such a resolution under your discretionary power as a Congressman to introduce anything you want to.

Mr. TINKHAM. On June 30 I introduced a resolution asking the Federal Trade Commission to make an investigation in relation to the reasonableness of price and the scarcity of sugar. That resolution was not passed by the House until October 1.

Mr. WHALEY. Well, that was with reference to an investigation and not a purchase.

Mr. TINKHAM. With reference to an investigation. I knew nothing at that time of the existence of the Sugar Equalization Board or the authority that the President had, as sole stockholder of it—or, I might say, of the subject of sugar itself, except that it was sweet and white, and that most of it came from Cuba.

Mr. WHALEY. The Sugar Equalization Board was created by law?

Mr. TINKHAM. Yes; it was created by law.

Mr. WHALEY. And you were a Member of Congress when that act was passed?

Mr. TINKHAM. I was a Member of Congress when that act was passed; that is true.

Mr. WHALEY. And therefore you ought to have had information that there was such a Sugar Equalization Board?

Mr. TINKHAM. Perhaps I was legally chargeable with knowledge of it; but, as a matter of fact, I did not know that there was any such board.

Mr. BOIES. Has not the President recommended the dissolution of the Sugar Equalization Board?

Mr. TINKHAM. Not yet.

Mr. WHALEY. It is dissolved, however, is it not?

Mr. TINKHAM. I did not hear your question.

Mr. WHALEY. Is it not dissolved? Is it not out of existence?

Mr. TINKHAM. No; the board continues as a corporate entity until 1923 unless dissolved in accordance with law before that, and I sup-

pose that means in accordance with the Delaware laws, as it is a Delaware corporation.

Mr. WHALEY. Has it not wound up its affairs?

Mr. TINKHAM. Yes; to all practical intents and purposes. On the 31st day of December all its contracts with the sugar manufacturers expired, and also its contracts with the refineries expired, and I suppose that it has wound up its affairs.

Mr. WHALEY. Now, as a matter of fact, did not the Sugar Equalization Board ask for additional power from Congress, and instead of giving them additional power did it not curtail their power?

Mr. TINKHAM. A little later in this hearing I will read exactly what the Equalization Board has to say, and I think it will be with some interest that the committee will learn that the Equalization Board did not want to continue, and did not ask that it be continued, and did not want any powers; but it said that if Congress insisted, of course, it would have to perform the duties.

Mr. WHALEY. As a matter of fact, we passed a law here which curtailed their original powers, did we not?

Mr. TINKHAM. Excuse me; but we did not pass a law which curtailed their powers; we continued their powers after the Lever Act went out of effect by the proclamation of peace.

Mr. WHALEY. Well, will you insert those two acts in the record?

Mr. TINKHAM. I will do so.

(The acts referred to are as follows:)

[PUBLIC—No. 41—65TH CONGRESS.]

[H. R. 4961.]

An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel, including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessities during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act.

SEC. 2. That in carrying out the purposes of this act the President is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds.

SEC. 3. That no person acting either as a voluntary or paid agent or employee of the United States in any capacity, including an advisory capacity, shall solicit, induce, or attempt to induce any person or officer authorized to execute or to direct the execution of contracts on behalf of the United States to make any contract or give any order for the furnishing to the United States of work, labor, or services, or of materials, supplies, or other property of any kind or character, if such agent or employee has any pecuniary interest in such contract or order, or if he or any firm of which he is a member, or corporation, joint-stock company, or association of which he is an officer or stockholder, or in the pecuniary profits of which he is directly or indirectly interested,

shall be a party thereto. Nor shall any agent or employee make, or permit any committee or other body of which he is a member to make, or participate in making, any recommendation concerning such contract or order to any council, board, or commission of the United States, or any member or subordinate thereof, without making to the best of his knowledge and belief a full and complete disclosure in writing to such council, board, commission, or subordinate of any and every pecuniary interest which he may have in such contract or order and of his interest in any firm, corporation, company, or association being a party thereto. Nor shall he participate in the awarding of such contract or giving such order. Any willful violation of any of the provisions of this section shall be punishable by a fine of not more than \$10,000, or by imprisonment of not more than five years, or both: *Provided*, That the provisions of this section shall not change, alter or repeal section forty-one of chapter three hundred and twenty-one, Thirty-fifth Statutes at Large.

SEC. 4. That it is hereby made unlawful for any person willfully to destroy any necessities for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessities in or in connection with their production, manufacture, or distribution; to hoard, as defined in section 6 of this act, any necessities; to monopolize or attempt to monopolize, either locally or generally, any necessities; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof, or (e) to exact excessive prices for any necessities; or to aid or abet the doing of any act made unlawful by this section.

SEC. 5. That, from time to time, whenever the President shall find it essential to license the importation, manufacture, storage, mining, or distribution of any necessities, in order to carry into effect any of the purposes of this act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessities as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of account to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, or whose license shall have been revoked, knowingly engages in or carries on any business for which a license is required under this section, or willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice, in accordance with the requirement of an order issued under this section, or any regulation prescribed under this section, shall, upon conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, cooperative association of farmers or gardeners, including live-stock farmers, or other persons with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him, nor to any common carrier, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States or any State, Territory, or the District of Columbia: *Provided further*, That for the purposes of this act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed \$100,000 per annum.

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SEC. 6. That any person who willfully hoards any necessities shall upon conviction thereof be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both. Necessaries shall be deemed to be hoarded within the meaning of this act when either (a) held, contracted for, or arranged for by any person in a quantity in excess of his reasonable requirements for use or consumption by himself and dependents for a reasonable time; (b) held, contracted for, or arranged for by any manufacturer, wholesaler, retailer, or other dealer in a quantity in excess of the reasonable requirements of his business for use or sale by him for a reasonable time, or reasonably required to furnish necessities produced in surplus quantities seasonally throughout the period of scant or no production; or (c) withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price: *Provided*, That this section shall not include or relate to transactions on any exchange, board of trade, or similar institution or place of business as described in section 13 of this act that may be permitted by the President under the authority conferred upon him by said section 13: *Provided, however*, That any accumulating or withholding by any farmer or gardener, cooperative association of farmers or gardeners, including live-stock farmers, or any other person, of the products of any farm, garden, or other land owned, leased, or cultivated by him shall not be deemed to be hoarding within the meaning of this act.

SEC. 7. That whenever any necessities shall be hoarded as defined in section 6 they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessities shall be adjudged to be hoarded they shall be disposed of by sale in such manner as to provide the most equitable distribution thereof as the court may direct, and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same.

SEC. 8. That any person who willfully destroys any necessities for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof, be fined not exceeding \$5,000 or imprisoned for not more than two years, or both.

SEC. 9. That any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict the distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof shall, upon conviction thereof, be fined not exceeding \$10,000 or be imprisoned for not more than two years, or both.

SEC. 10. That the President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum will make up such amount as will be just compensation for such necessities or storage space, and jurisdiction is hereby conferred on the United States district courts to hear and determine all such controversies: *Provided*, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessities held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them.

SEC. 11. That the President is authorized from time to time to purchase, to store, to provide storage facilities for, and to sell for cash at reasonable prices, wheat, flour, meal, beans, and potatoes: *Provided*, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section 14 of this Act, then the price paid for any such articles so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessities under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

SEC. 12. That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or other plant, or any part thereof, in or through which any necessities are or may be manufactured, produced, prepared, or mined, and to operate the same. Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof. The United States shall make just compensation, to be determined by the President, for the taking over, use, occupation, and operation by the Government of any such factory, mine, or plant, or part thereof. If the compensation so determined be unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation, in the manner provided by section 24, paragraph 20, and section 145 of the Judicial Code. The President is authorized to prescribe such regulations as he may deem essential for carrying out the purposes of this section, including the operation of any such factory, mine, or plant, or part thereof, the purchase, sale, or other disposition of articles used, manufactured, produced, prepared, or mined therein, and the employment, control, and compensation of employees. Any moneys received by the United States from or in connection with the use or operation of any such factory, mine, or plant, or part thereof, may, in the discretion of the President, be used as a revolving fund for the purpose of the continued use or operation of any such factory, mine, or plant, or part thereof, and the accounts of each such factory, mine, plant, or part thereof, shall be kept separate and distinct. Any balance of such moneys not used as part of such revolving fund shall be paid into the Treasury as miscellaneous receipts.

SEC. 13. That whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in, or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessities, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents. Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction, shall, upon conviction thereof, be punished by a fine not exceeding \$10,000 or by imprisonment for not more than four years, or both.

SEC. 14. That whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers a reasonable profit. The President shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards act, approved August 11, 1916. The President shall from time to time establish and promulgate such regulations as he shall deem wise in connection with such guaranteed prices, and in particular

governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern spring or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every producer of wheat produced within the United States, that, upon compliance by him with the regulations prescribed, he shall receive for any wheat produced in reliance upon this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefor as fixed pursuant to this section. In such regulations the President shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. The guaranteed prices for the several standard grades of wheat for the crop of 1918, shall be based upon number one northern spring or its equivalent at not less than \$2 per bushel at the principal interior primary markets. This guaranty shall not be dependent upon the action of the President under the first part of this section, but is hereby made absolute and shall be binding until May 1, 1919. When the President finds that the importation into the United States of any wheat produced outside of the United States materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on wheat and to the value of wheat at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section, he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon wheat when imported in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty upon wheat under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is authorized also, in his discretion, to purchase any wheat for which a guaranteed price shall be fixed under this section, and to hold, transport, or store it, or to sell, dispose of, and deliver the same to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of wheat under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

SEC. 15. That from and after thirty days from the date of the approval of this act no foods, fruits, food materials, or feeds shall be used in the production of distilled spirits for beverage purposes: *Provided*, That under such rules, regulations, and bonds as the President may prescribe, such materials may be used in the production of distilled spirits exclusively for other than beverage purposes, or for the fortification of pure sweet wines as defined by the act entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916. Nor shall there be imported into the United States any distilled spirits. Whenever the President shall find that limitation, regulation, or prohibition of the use of foods, fruits, food materials, or feeds in the production of malt or vinous liquors for beverage purposes, or that reduction of the alcoholic content of any such malt or vinous liquor, is essential, in order to assure an adequate and continuous supply of food, or that the national security and defense will be subserved thereby, he is authorized, from time to time, to prescribe and give public notice of the extent of the limitation, regulation, prohibition, or reduction so necessitated. Whenever such notice shall have been given and shall remain unrevoked no person shall, after a reasonable time prescribe in such notice, use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or import any such liquors except under license issued by the President and in compliance with rules and regulations determined by him governing the production and importation of such liquors and the alcoholic content thereof. Any person who willfully violates the provisions of this section, or who shall use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or who shall import any such liquors, without first obtaining a license so to do when a license is required under this section, or who shall violate any rule or regulation made under this section, shall be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided further*, That nothing in this section shall be construed to authorize the licensing of the manufacture of vinous or malt liquors in any State,

Territory, or the District of Columbia, or any civil subdivision thereof, where the manufacture of such vinous or malt liquor is prohibited.

SEC. 16. That the President is authorized and directed to commandeer any or all distilled spirits in bond or in stock at the date of the approval of this act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section 24, paragraph 20, and section 145 of the Judicial Code.

SEC. 17. That every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the execution of any duty authorized to be performed by or pursuant to this act shall upon conviction thereof be fined not exceeding \$1,000 or be imprisoned for not more than one year, or both.

SEC. 18. That the sum of \$2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June 30, 1918, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the city of Washington and elsewhere, as the President may deem essential.

SEC. 19. That for the purposes of this act the sum of \$150,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available during the time this act is in effect: *Provided*, That no part of this appropriation shall be expended for the purposes described in the preceding section: *Provided further*, That itemized statements covering all purchases and disbursements under this and the preceding section shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the 25th day of each month after the taking effect of this act, covering the business of the preceding month, and said statements shall be subject to public inspection.

SEC. 20. That the employment of any person under the provisions of this act shall not exempt any such person from military service under the provisions of the selective draft law approved May 18, 1917.

SEC. 21. The President shall cause a detailed report to be made to the Congress on the 1st day of January each year of all proceedings had under this act during the year preceding. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts, payments, and expenditures, together with a statement showing the general character, and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this act.

SEC. 22. That if any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

SEC. 23. That words used in this act shall be construed to import the plural or the singular, as the case demands. The word "person," wherever used in this act, shall include individuals, partnerships, associations, and corporations. When construing and enforcing the provisions of this act, the act, omission, or failure of any official, agent, or other person acting for or employed by any partnership, association, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such partnership, association, or corporation as well as that of the person.

SEC. 24. That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this act; but all rights and liabilities under this act arising before its termination shall continue and may be enforced in the

same manner as if the act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this act had not been terminated.

SEC. 25. That the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same.

Or if the President of the United States shall be of the opinion that he can thereby better provide for the common defense and whenever, in his judgment, it shall be necessary for the efficient prosecution of the war, then he is hereby authorized and empowered to require any or all producers of coal and coke, either in any special area or in any special coal fields, or in the entire United States, to sell their products only to the United States through an agency to be designated by the President, such agency to regulate the resale of such coal and coke, and the prices thereof, and to establish rules for the regulation of and to regulate the methods of production, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign, and to make payment of the purchase price thereof to the producers thereof, or to the person or persons legally entitled to said payment.

That within fifteen days after notice from the agency so designated to any producer of coal and coke that his, or its, output is to be so purchased by the United States as hereinbefore described, such producer shall cease shipments of said product upon his own account and shall transmit to such agency all orders received and unfilled or partially unfilled, showing the exact extent to which shipments have been made thereon, and thereafter all shipment shall be made only on authority of the agency designated by the President, and thereafter no such producer shall sell any of said products except to the United States through such agency, and the said agency alone is hereby authorized and empowered to purchase during the continuance of the requirement the output of such producers.

That the prices to be paid for such products so purchased shall be based upon a fair and just profit over and above the cost of production, including proper maintenance and depletion charges, the reasonableness of such profits and cost of production to be determined by the Federal Trade Commission, and if the prices fixed by the said commission of any such product purchased by the United States as hereinbefore described be unsatisfactory to the person or persons entitled to the same, such person or persons shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said

seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

All such products so sold to the United States shall be sold by the United States at such uniform prices, quality considered, as may be practicable and as may be determined by said agency to be just and fair.

Any moneys received by the United States for the sale of any such coal and coke may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any moneys not so used shall be covered into the Treasury as miscellaneous receipts.

That when directed by the President, the Federal Trade Commission is hereby required to proceed to make full inquiry, giving such notice as it may deem practicable, into the cost of producing under reasonably efficient management at the various places of production the following commodities to wit, coal and coke.

The books, correspondence, records, and papers in any way referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all times be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefor in the manner provided for in sections 6 and 9 of the act of Congress approved September 26, 1894, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction.

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith, prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been fixed as herein provided, ask, demand, or receive a higher price, or whoever shall, with knowledge that the regulations have been prescribed as herein provided, violate or refuse to conform to any of the same, shall, upon conviction, be punished by fine of not more than \$5,000, or by imprisonment for not more than two years, or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any price or upon any terms that may be agreed upon or otherwise lawfully determined.

SEC. 26. That any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessities of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both: *Provided*, That any storing or holding by any farmer, gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this act: *Provided further*, That farmers and fruit growers,

cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: *Provided further*, That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said articles produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, commonly known as the Sherman Antitrust Act.

SEC. 27. That the President is authorized to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increasing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same for cash at cost, including all expenses connected therewith. For carrying out the purposes of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of \$10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of the nitrate of soda shall go into the Treasury as miscellaneous receipts.

Approved, August 10, 1917.

[PUBLIC—No. 63—66TH CONGRESS.]

[H. R. 8624.]

An Act To amend an act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, and to regulate rents in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as "The Food Control and the District of Columbia Rents act."

TITLE I.—FOOD CONTROL ACT AMENDMENTS.

That section one of the act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, is hereby amended to read as follows:

"That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement of foods, feeds, wearing apparel, containers primarily designed or intended for containing foods, feeds, or fertilizers; fuel, including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulation, and private controls affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessities during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act."

SEC. 2. That section 4 of such act of August 10, 1917, is hereby amended to read as follows:

"That it is hereby made unlawful for any person willfully to destroy any necessities for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessities in or in connection with their production, manufacture, or distribution; to hoard, as defined in section 6 of this act, any necessities; to monopolize or attempt to monopolize, either locally or generally, any necessities; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict distribution

of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof; or (e) to exact excessive prices for any necessities, or to aid or abet the doing of any act made unlawful by this section. Any person violating any of the provisions of this section upon conviction thereof shall be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, horticulturist, vineyardist, planter, ranchman, dairyman, stockman, or other agriculturist, with respect to the farm products produced or raised upon land owned, leased, or cultivated by him: *Provided further*, That nothing in this act shall be construed to forbid or make unlawful collective bargaining by any cooperative association or other association of farmers, dairymen, gardeners, or other producers of farm products with respect to the farm products produced or raised by its members upon land owned, leased, or cultivated by them."

SEC. 3. That sections 8 and 9 of the act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, be, and the same are hereby, repealed: *Provided*, That any offense committed in violation of said sections 8 and 9, prior to the passage of this act, may be prosecuted and the penalties prescribed therein enforced in the same manner and with the same effect as if this act had not been passed.

Approved, October 22, 1919.

[PUBLIC—No. 109—66TH CONGRESS.]

[S. 3284.]

An Act To provide for the national welfare by continuing the United States Sugar Equalization Board until December 31, 1920, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to continue during the year ending December 31, 1920, the United States Sugar Equalization Board (Incorporated), a corporation organized under the laws of the State of Delaware, and to vote or use the stock in such corporation held by him for the benefit of the United States, or otherwise exercise his control over the corporation and its directors, in such a manner as to authorize and require them to adopt and carry out until December 31, 1920, plans and methods of securing, if found necessary for the public good, an adequate supply and an equitable distribution of sugar at a fair and reasonable price to the people of the United States. Sections 5 and 10 of the act entitled "An act to further provide for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, as far as the same relates to raw or refined sugar, sirups, or molasses, are hereby continued in full force and effect until December 31, 1920, notwithstanding the provisions of section 24 of said act: *Provided*, That the provisions of this act shall expire as to the domestic product June 30, 1920: *And provided further*, That the zone system of sale and distribution of sugars heretofore established by the said United States Sugar Equalization Board shall be abolished and shall not be reestablished or maintained, and that sugars shall be permitted to be sold and to circulate freely in every portion of the United States. The termination of this act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this act; but all rights and liabilities under this act arising before its termination shall continue and may be enforced in the same manner as if the act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this act had not been terminated.

Approved, December 31, 1919.

Mr. TINKHAM (continuing). May I explain, Mr. Chairman, that under the Lever Act the situation was this: That the Equalization Board believed that it would be useless for it to purchase the Cuban crop unless it had the power to license. When the treaty was signed the Lever Act would go out of operation, and then they would have no control; therefore, it said, before the Senate Committee on Agriculture, "If you are going to compel us to do business, extend

to us the power to license"; and the power to license was extended, as I remember it, until the 1st of April; but that act was practically nugatory, because it was not passed until after the entire Cuban sugar crop had passed into the general market, and was out of control.

Mr. WHALEY. Now, did the Sugar Equalization Board have any power of distribution?

Mr. TINKHAM. They had the power of distribution to the refineries and the power to make contracts with the refiners.

Mr. WHALEY. Contracts with the refiners?

Mr. TINKHAM. With the refiners.

Mr. WHALEY. Now, who controlled the distribution? Did not the Government control the distribution?

Mr. TINKHAM. Yes; under the license system.

Mr. WHALEY. That is, it was under the food control, but not under the Sugar Equalization Board?

Mr. TINKHAM. Yes; but it was contemplated, as I understand, in the new act, for the Sugar Equalization Board to have that power of licensing.

Mr. WHALEY. Yes; and was it not contemplated that the Sugar Equalization Board should have the distribution of it besides issuing licenses?

Mr. TINKHAM. I do not remember about the distribution.

Mr. WHALEY. Well, how could they distribute it, unless it had the power under the food-control act to—

Mr. TINKHAM (interposing). The power to license would be sufficient.

Mr. WHALEY (continuing). To distribute?

Mr. TINKHAM. What do you mean by distribution? Do you mean the actual physical distribution?

Mr. WHALEY. Yes.

Mr. TINKHAM. I think not.

Mr. WHALEY. Well, if the Government distributes it, it has to have the actual physical distribution, does it not?

Mr. TINKHAM. No; it leaves that to other people to distribute—just like a good wholesale business man would do.

Mr. WHALEY. Well, why did it ask for the power of distribution in the new act?

Mr. TINKHAM. I do not think they did ask for the power of distribution in the new act; they asked for the power to license; in other words, they got control of the crop of sugar, and then they sold it to the refiners or to others. A distribution was made; that is, a physical distribution was made—

Mr. WHALEY. By whom?

Mr. TINKHAM. I suppose it was made by the refiners, who took it from the Equalization Board, or perhaps it was delivered directly from Cuba—the consignments that were directed or controlled by that board.

Mr. WHALEY. Do you know how the 1918 or the 1919 crop was distributed?

Mr. TINKHAM. Do you mean the actual physical distribution?

Mr. WHALEY. Yes.

Mr. TINKHAM. I do not.

Mr. WHALEY. You do not know whether the Equalization Board distributed it or the Food Control Board?

Mr. TINKHAM. No; as to the physical distribution I do not.

Now, in relation to the power of the Attorney General to do what he did, in his telegram—that is what this investigation is about—I have offered the Lever Act and the amendments, and claimed that there is no authority there for him to do as he did. I now want to offer the statements of the Attorney General himself before the Committee on Agriculture of the House of Representatives, on August 20, 1919, on pages 79, 82, 83, 84, and 85, when he appeared and asked for an amendment to the Lever Act to enable him to prosecute profiteers, which amendment or amendments were passed.

And I might say that these statements of the Attorney General are absolutely conclusive as against his power to do what he did, and are the best arguments against the soundness of what he did, as well as against the legality of it.

Mr. WHALEY. What is your idea of the definition of "profiteering"?

Mr. TINKHAM. Some one that charges an unfair profit. I think that is a fair statement; and that is a question of fact, practically, in each case, or is a question of fact until established by a series of decisions by a court and jury.

Mr. WHALEY. Well, what is an unfair price?

Mr. TINKHAM. That is dependent upon many factors that may come into the particular case.

Mr. WHALEY. But you are a business man and you know what it is based on. Now, what do you think an unfair price is based on—market value?

Mr. TINKHAM. I should think it was based upon, in many cases, the difference between what it cost originally and the charge for the handling and the distribution.

Let me say in relation to that, it was considered during the war that the refiners of sugar had a fair profit if they increased the price at which they bought it from the Government to the wholesaler or jobber by about 1 cent; and, as I understand it, when sugar came down to the retailer the retailer was allowed a profit of about 2 cents.

Mr. WHALEY. Now, your idea of a fair price is the actual cost of production plus a reasonable profit?

Mr. TINKHAM. Plus a reasonable profit; it seems to me that that is so.

Mr. WHALEY. And you would go into each case; you would not fix one price for all, but would go into each case?

Mr. TINKHAM. You would not have a right to fix a price—

Mr. WHALEY (interposing). You would have to go into each individual case?

Mr. TINKHAM. It seems to me that the lawful and practical way for the Attorney General to have proceeded under the Lever Act would be to take up one or two cases and have a determination by a court and jury as required by law.

Mr. WHALEY. Did you ever hear of a judge and a jury fixing the price of any article and saying that all over that price would be profiteering?

Mr. TINKHAM. I think there have been a number of cases in relation to sugar.

Mr. WHALEY. Can you name one?

Mr. TINKHAM. Yes; there was a conviction in Buffalo, N. Y.; and there have been a number, as I understand it, in New York, where certain excessive charges have been made for sugar. The jury found in those cases that a charge of 4 cents, or 8 cents, over what the man purchased the sugar for was extortionate, and was unfair, and that he was guilty of profiteering.

Mr. WHALEY. But the jury did not fix the general price of sugar, did it?

Mr. TINKHAM. No; not at all.

Mr. SUMNERS. Mr. Tinkham, when you come, however, to prosecuting the sugar planters for profiteering, what guidance would you get from prior cases, when one planter might have 25 per cent of a normal yield, another might have 50 per cent, and another 80 per cent, with practically the same overhead cost in production?

Mr. TINKHAM. How did you frame your question? Did you ask how I would determine it?

Mr. SUMNERS. I understand your statement to be—and we are dealing with sugar now, and not with any academic proposition generally—

Mr. TINKHAM. Yes; I understand.

Mr. SUMNERS (continuing). That if you were Attorney General you would carry on a few prosecutions, and then when you had obtained several convictions you would be able to make up your mind, from a sort of general average of the result of those convictions, as to whether you ought to prosecute a given man where there was some charge made that he was probably profiteering. My question is, what sort of guidance would you get from the judgments of courts where the production would vary on the various plantations, say, from 25 per cent to 80 per cent of normal production, with practically the same overhead cost of production?

Mr. TINKHAM. It would be a very difficult thing; the Attorney General set the price of 17 cents for Louisiana clarified sugar and 18 cents for Louisiana clear granulated sugar at the plantation, no matter whether the particular man's crop was a good one and had only had 10 per cent of damage, or whether it was a bad one and had 70 per cent of damage. It is a most difficult question.

Mr. SUMNERS. Yes.

Mr. TINKHAM. The Attorney General, no matter how difficult it might be, had only the authority that the law gave him.

Mr. SUMNERS. Yes; that is correct.

Mr. TINKHAM. I am challenging his authority in the action he took. It is all very difficult and it would be very hard, probably, to prove your case, or set your standard.

But that is exactly what the Attorney General did when he set a price of 17 and 18 cents for the whole State of Louisiana, irrespective of whether the grower had a large plantation or a small one, or a rich one or a poor one, or what the damage to his crop had been.

Mr. HUSTED. What business is it of the Attorney General to say what is a reasonable price for sugar in Louisiana anyhow?

Mr. TINKHAM. It is no business of his at all. The only authority that the Attorney General has—and when he comes here before the committee, I want him to be asked the question categorically what

authority he has, except to prosecute individual cases of profiteering. Whether it was difficult or not is not the question. The question is, what is his authority, and what are his rights?

Mr. BOIES. Did you ever see a condition in this country in which a sugar farmer, or any other farmer, could set a price on his product that would make him guilty of profiteering?

Mr. TINKHAM. I do not know.

Mr. SUMNERS. I am not exactly clear about this thing, Mr. Tinkham.

Mr. TINKHAM. Well, we want to go to the bottom of it; I will be glad to answer any question that will make it more clear.

Mr. SUMNERS. Yes; we want to get the gist of the thing; we want to find out whether we should criticize the Attorney General for what he did. Now, as a matter of fact, when the market price was, as I believe you stated, 20 odd cents on sugar and it was going up—

Mr. TINKHAM (interposing). Yes; that telegram from district attorney, Mr. Mooney, said that prices were from 20 to 27 cents; that 20½ cents had just been offered, and that the market was bare and rising.

Mr. SUMNERS. Yes. Now, I believe it is the fact the Louisiana sugar crop was short of a normal production that year, was it not?

Mr. TINKHAM. Yes; there is no question about that. I have the figures and will submit them to the committee later.

Mr. SUMNERS. And the cost of production was high. Now, the Attorney General did not undertake to fix other than the price at which, under the investigation of his representative, viewing the condition from its general average aspects, it would be regarded as giving an unfair profit. Anybody that could find any sugar to buy at less than 17 cents, of course could buy it; is that correct?

Mr. TINKHAM. That is correct.

Mr. SUMNERS. And there would be no violation of the law?

Mr. TINKHAM. That is true, so far as the Louisiana district was concerned after the Attorney General's agreement.

Mr. WHALEY. Mr. Tinkham, let me ask you this question: Your contention, as I understand you, is that the Attorney General was wrong in agreeing to the price of 17 and 18 cents for Louisiana sugar?

Mr. TINKHAM. Absolutely, and establishing a prima facie case.

Mr. WHALEY. One minute; let me finish. And that he ought to have left those people alone and allowed them to have obtained any price, no matter whether it was 25 cents, or 30 cents, or 40 cents a pound—

Mr. TINKHAM (interposing). If it was not profiteering.

Mr. WHALEY (continuing). Wait a minute. I want you to answer the question.

Mr. TINKHAM. I will do so.

Mr. WHALEY. And then, after they had sold their sugar, he should take up the case of each individual sugar producer in Louisiana before the grand jury and let him prove whether he had sold for an unreasonable price or not; is that your contention?

Mr. TINKHAM. My contention is this—

Mr. WHALEY (interposing). Will you answer that question, please? Is that your contention?

Mr. TINKHAM. I want to answer the question, but I want to state——

Mr. WHALEY (interposing). Well, I do not want you to go around the corner to answer it; I want you to stand in the middle of the street.

Mr. TINKHAM. I am going to answer it; but I want to state what my opinion is; I do not want to evade the question at all. What you want is to know what my opinion is. If I answer "Yes" or "No" to your question, it might be misleading; whereas if I state exactly what my opinion is, it will not be misleading.

I think that the only authority that the Attorney General had under the law was to prosecute individual profiteering cases. Now, what result it might lead to, makes no difference. He had to act within the authority given him by law. As I stated before, it would be a very difficult thing to indict and convict where there were so many varying conditions and varying factors which would enter into the problem of whether the profit or price was extortionate or not. I will admit that.

I rather think, however, that what practically would have worked out would have been this: That if the Attorney General had made an examination through his United States attorney, and found out what seemed to be a fair price, and then had prosecuted and established as he had a full right to do under the law what the jury in that particular case thought was a fair price, the trade would have more or less settled to whatever figure that might be. Now, I could not say that would result from one case. In other words, he could take the same course that, as I understand it, was taken under the antitrust law, the Sherman law, where the rule of reason was established by several decisions. Men do not want to contest with the Government; men do not want to pay attorneys' fees unnecessarily, and if they can find out what they should do, the honest one and the fair one usually wants to pursue that course. I know that the average man is honest and fair and wants to keep out of court and out of trouble, and avoid trouble and expense.

Now, that seems to me a fair statement of what my opinion is and what should have been done.

Mr. WHALEY. Let me see if I understand you correctly. From what you have said I gathered that you thought the Attorney General should fix the price secretly in his mind?

Mr. TINKHAM. I do not like the word "secretly"——

Mr. WHALEY (interposing). One minute. If you do not interrupt me, perhaps we may be able to get together on this proposition.

I did not understand you to say, in answer to my question, that you believe the Attorney General should fix the price in his own mind, and that all who exceeded that price should be brought before the court and make them prove their case in court, instead of openly saying to the people in Louisiana, "I believe a fair and reasonable price of the crop of Louisiana is so and so, and fix it at a certain price and not above, and all who exceed that I will prosecute and all who do not exceed it I will not prosecute." In other words, do you believe in secret diplomacy instead of open statement?

Mr. TINKHAM. I do not think that is quite a fair statement. However, I want to say this in reply, that it was not only in the Attorney General's mind.

Mr. WHALEY. No; I know it is not.

Mr. TINKHAM. The Attorney General went further than that. He drew up an agreement, or had an agreement drawn, and fixed a prima facie case making a man indictable if he sold in excess of that price which was fixed by him, and who else? A fair-price committee? Mr. Representative, no; a committee of the very men who were selling their product. Now, that is a very different situation.

Mr. WHALEY. Who composed that committee?

Mr. TINKHAM. The producers.

Mr. WHALEY. Were there any consumers there?

Mr. TINKHAM. The Attorney General—

Mr. WHALEY. You made a statement of fact.

Mr. TINKHAM. Yes.

Mr. WHALEY. Please answer my question, if there were any consumers on this committee?

Mr. TINKHAM. You should find those facts out yourself. The only evidence I have is the evidence of the interrogatories of the Attorney General. November 7 Mr. Mooney said:

After a protracted meeting the Louisiana sugar planters through a committee agreed to a fair price of 17 cents a pound for prime yellow granulated clarified.

Mr. WHALEY. But that does not say that the district attorney did not consult—

Mr. TINKHAM. I did not say that he did not consult.

Mr. WHALEY. You said that he tried to arrive at it only with the producers.

Mr. TINKHAM. I said he agreed, and he only did agree.

Mr. HUSTED. The letter of the district attorney, Mooney, to the Attorney General, refers to a conference with producers only, does it not? Does he not state that after a conference with a committee representing the producers they agreed to this price, and making no reference whatever to consumers. That is the way I understood the letter.

Mr. TINKHAM. There is this in the body of the letter—

Mr. BOIES. Just one question there, if I may ask you?

Mr. TINKHAM. Yes.

Mr. BOIES. You know that under the law the Attorney General of the United States has no authority to say what shall be prima facie evidence in a criminal prosecution?

Mr. TINKHAM. Absolutely there is no question about it.

Mr. BOIES. Also you know that he has no authority by law to say who shall be indicted. That is for the grand jury?

Mr. TINKHAM. I do not know as to the latter, whether that last statement is true or not. No; the grand jury must indict.

Mr. WHALEY. Will you tell me, as a matter of fact, are you a lawyer?

Mr. TINKHAM. No; I am a member of the bar.

Mr. WHALEY. You know the practice of the law?

Mr. TINKHAM. Yes; to a certain extent.

Mr. WHALEY. And I think every school boy who has had a law book in his hands knows that the prosecuting attorney always has a wide discretion as to what he will present to the grand jury and whom he will present.

Mr. TINKHAM. Absolutely.

Mr. WHALEY. And, as a matter of fact, he has a wide discretion as to how he will proceed in a criminal prosecution?

Mr. BOIES. You know that the prosecuting attorney presents a case to the grand jury, and it is left to them upon their oaths to return an indictment or reject it?

Mr. WHALEY. Will you read that letter or such portion of it as refers to contracts with the people in Louisiana?

Mr. TINKHAM. As long as the question has been raised, I think that I should read most of that communication. [Reading.]

NEW ORLEANS, LA., November 7, 1919.

ATTORNEY GENERAL,
Washington, D. C.:

After a protracted meeting with the sugar planters their committee agreed to a fair price of 17 cents per pound for prime yellow clarified sugar, net on plantation, with 1 cent additional per pound for choice plantation granulated intermediate grades in proportion. The committee further recommended that all sales where delivery has begun by evidence of bills of lading shall stand, but recommended that all contracts for a higher figure be abrogated in fairness to all producers and manufacturers whose action in making contracts has been delayed by deference to authorities. Prime yellow clarified sold on the open market in New Orleans yesterday at 20½ cents, market virtually bare, with ready buyers for all sugar of that grade at that price. My session with the planters was a protracted one and was held after I had talked to many of the leading consumers and obtained their views. The committee itself was composed largely of the most conservative element of planters, yet there was only one member of the committee originally consenting to the 17 cents suggestion, all other members holding for a higher price because of the admitted short crop and low sugar yield.

I stated that the agreement was made by or with the planters' committee, and it was made by the planters' committee, because it substantiates, so far as I can see, the telegram. I think that is proof of the telegram that is here.

Mr. HUSTED. If you want to buy a thing, you have to make an agreement with the people who are going to sell.

Mr. TINKHAM. Yes.

Mr. HUSTED. And as a matter of fact, the consumers did not have an agreement with the planters?

Mr. TINKHAM. Of course not.

Mr. HUSTED. It was a matter of agreement between the district attorney—

Mr. TINKHAM. And the planters.

Mr. HUSTED. But the price arrived at by the district attorney was arrived at without consultation with the consumers?

Mr. TINKHAM. It says the consumers. If this committee investigates perhaps we can find out who these consumers were.

Mr. HUSTED. What authority did the district attorney have to make an agreement with anybody?

Mr. TINKHAM. None whatever, I contend.

Mr. HUSTED. Now, assuming for the purposes of the argument, that the President of the United States had no authority to purchase the Cuban crop, even though he could accomplish a beneficial result to the people of the country by so doing, suppose he had no authority, by what process of reasoning can it be contended that the Attorney General had any greater authority to exceed his usual power in order to accomplish the same result?

Mr. TINKHAM. Simply revolutionary processes of reasoning, that is all.

Mr. SUMMERS. By the same line of reasoning, if the President is criticized for not having exercised a power which he did not legally possess, we will say for the sake of argument, then why do you criti-

cize the Attorney General for having exercised that power? You criticize the President for not doing it and you criticize the Attorney General for doing it.

Mr. HUSTED. That is a non sequitur, because that assumes a premise which is not true. The people who criticize the President contend that he had the power. On the other hand, the contention is that the Attorney General had no power whatever.

Mr. SUMNERS. As I understood the chairman's statement to the witness a moment ago, the chairman asked the witness, assuming for the sake of argument that the President did not have the power, then if the President is criticized for the nonexercise of that power, when he did not have it, how is the Attorney General to be criticized for exercising that power? I just turned that question around, exactly, and I asked the witness this question: If, assuming for the sake of argument, just as the chairman did, that the President did not possess the power, the witness criticized the President for not having exercised a power which he did not legally possess, according to the witness, if the President had exercised that power which he did not legally possess, to increase the price of sugar, and if the Attorney General exercised a power which he did not legally possess, and it has increased the price of sugar, why is he criticizing the Attorney General?

Mr. TINKHAM. The chairman stated it properly and clearly when he said that it was the contention of those who believe that the President should have acquired such Cuban crop, that he did have the power. One of the questions you are to make a finding of fact upon is whether the Attorney General possessed or did not possess the power to fix the price.

Mr. WHALEY. If the President had no authority to acquire the Cuban crop, you would not criticize him?

Mr. TINKHAM. I should not criticize him.

Mr. SUMNERS. If you claim that the President did not have the power, if the purchase of the Cuban crop was for the national defense, you would be the last man to criticize him?

Mr. TINKHAM. If he contended that under that act he did not have the power, I should not criticize him, as I do, because I do not understand that that is his position.

Mr. SUMNERS. Do you claim that he had any power to exercise any discretion under the act, unless he had power to exercise it for the national defense?

Mr. TINKHAM. I think he had that power until the war was ended. Until we had a declaration of peace he had the power.

Mr. SUMNERS. Will the witness be good enough to answer my question? Do you contend that the President had any power to purchase the Cuban crop unless the President should determine that to exercise the power would be for the public defense?

The CHAIRMAN. He has answered that.

Mr. SUMNERS. It never has been answered.

Mr. TINKHAM. May I answer it in this way—

Mr. SUMNERS. Well, I wish the witness could answer it "yes" or "no." It is a direct question.

Mr. TINKHAM. It seems to me that the words "public defense" used in a war measure are of the broadest application, and allow of a meaning and a definition that ordinarily might not be given to that exact language. In other words, in war statutes, the powers con-

ferred are all exceptional and extraordinary. If I should answer your question "yes" or "no," it might make it appear that I felt that the President did not have the power; whereas my understanding of the use of those words would lead me to believe that he had. It is an extraordinary situation, and extraordinary language, and extraordinary power; it might be interpreted that he had that power, although we were not actually at war. Strictly construed, I might answer in a different way from what I would otherwise to the question as propounded by the honorable Representative from Texas.

Mr. HUSTED. This is all war power?

Mr. TINKHAM. All war power.

Mr. HUSTED. It is all war power for the national defense; is not that what it is based upon?

Mr. TINKHAM. Yes.

Mr. HUSTED. And does it not apply just as much to all statutes conferring war power, as it does to the Lever Act?

Mr. TINKHAM. That is right.

Mr. SUMNERS. As I understand, the witness said that the President, if he determined that the Cuban crop was necessary for the national defense, would have a right to purchase that crop.

Mr. TINKHAM. Yes.

Mr. SUMNERS. Now, I beg to submit to the witness this, that when a public official is being criticized for the manner in which he has exercised his power, it looks to me—I may be wrong about it—that a straightforward answer to the question would be the fairest thing, and that the witness ought to do that.

Mr. TINKHAM. Can I be fairer than to say this, that had I the power to do what the equalization board proposed that the President should do, knowing the situation as it is assumed he must have known it, with very serious social disturbances, I should have exercised my authority under the Lever control act to purchase the Cuban crop through the equalization board, just as he exercised it in relation to the coal strike.

Mr. HUSTED. No distinction can be made between the coal situation and the sugar situation, can there?

Mr. TINKHAM. No; both under an emergency, both war powers, both under the same act, and both the product, or all the product, of a very unusual occasion.

Mr. BOIES. Do you call these peace times, such as exist to-day?

Mr. TINKHAM. Technically, not.

Mr. BOIES. With thousands of American boys under arms over in France, and with the conditions that exist between France and Germany to-day?

Mr. TINKHAM. I think you would hardly call it normal peace.

Now, to go back to the question of whether the Attorney General had power to do what he did in this telegram, I want to read the testimony given by the Attorney General on August 20, before the Committee on Agriculture of the House of Representatives, when he appeared and recommended the amendments to the Lever control bill, which were given him, and as I stated before, my case was better argued by the Attorney General than it will be argued by myself before this committee.

Mr. WHALEY. You think that he exercised a power instead of discretion?

Mr. TINKHAM. I do not think that he had any discretion. I do not think he had any power.

Mr. WHALEY. And you do not think that the prosecuting attorney has any discretion?

Mr. TINKHAM. I do not think he has any discretion to do what he did, to enter into a written agreement with men who might be charged and might prove to be profiteers, in a prima facie case, in relation to a commodity produced all over a State and where conditions of crops varied, and where conditions of production varied. That is my contention in this case.

Mr. HUSTED. You do not think an Attorney General of the United States under the guise of functioning as a prosecuting officer of the Government has the right to constitute himself as a general price fixer for a whole section?

Mr. TINKHAM. Of course I do not. That is utterly unsound and unwarranted and without authority, and if the committee will listen to this colloquy between the Committee on Agriculture and the Attorney General of August 20, I think they will be convinced themselves [reading]:

Attorney General PALMER. Well, that has not been done; my proposition does not contemplate price-fixing all down the line on the part of everybody.

The CHAIRMAN. Yes; section 4.

Mr. McLAUGHLIN of Michigan. Yes; you take section 4, about the middle part; that it shall be unlawful "to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing with any necessities."

Attorney General PALMER. Well, that does not contemplate an Executive price fixing; that contemplates the leaving it to a court and jury to say whether the price charged under all the circumstances of the case is a just and reasonable charge.

Mr. McLAUGHLIN of Michigan. That really gives the authority to consider the question of rates and charges—and, of course, that means prices and profits—the right to consider in and interfere with business, large and small, as to prices.

Attorney General PALMER. You do not in section 4 give the Executive the right to consider the fairness or unfairness of such prices. You declare what is unlawful, that is, the charging of unfair and discriminatory, and unjust and unreasonable rates, and that leaves it as a question of fact and for the jury.

Let me tell you how we propose to operate that—and, to my mind, it is the only practicable method. There are two ways by which it could be done, I suppose. One is your suggestion—having a price fixed in advance by some governmental agency; you say by the President. That means by some great organization that will sweep the country from one end to the other, and have its accountants and investigators and bookkeepers and workers in every line of industry engaged in finding out how much is a fair price.

I think that is impracticable, because we can not build up that kind of an organization, and if you put it in the statute book, even as an alternative, we will be met by it at every corner road, and we will be criticized for not doing it that way, which will hurt the entire morale of the enforcement of your law.

The other method is this: When a man makes an unjust and unreasonable charge, or a discriminatory and unfair price, hale him into court. And our method, or our proposition to determine to the satisfaction of a jury what is a fair and reasonable price is this: We have called upon the former State food administrators, not to organize their food administration, but simply to organize in the cities and counties fair-price committees, which we have asked to be composed of a wholesaler, a retailer, a representative of labor, representatives of housewives, and representatives of the general public.

I want to draw the attention of the committee to the fact that no such committee is suggested nor existed, nor was consulted, before the price was fixed with reference to Louisiana sugar, so far as we know.

Mr. WHALEY. Who are consumers? Would you say the House was and the general public?

Mr. TINKHAM. I am going to leave it to the committee, as I suggested before, to find out who they were.

Mr. WHALEY. That is unfair to the committee. You are a witness here, and you are furnishing us with facts. You are reading something there, and you interpolate that no such thing was done in this case, and I have asked you who were the consumers who were consulted, and if they were not, housewives and others. You say that you will leave it to the committee.

Mr. TINKHAM. Excuse me; I do not want to be at all unfair. The telegram says:

I have talked to many of the leading consumers.

The United States Attorney does not say who those consumers were.

Mr. WHALEY. I am asking who those were. Are not the housewives and general public, consumers?

Mr. TINKHAM. Oh, yes; of course.

Mr. WHALEY. Then they are the consumers, in the sense in which the term is used there?

Mr. TINKHAM. It is suggested by the Attorney General that the wholesaler and retailer, representatives of labor, representatives of housewives, and representatives of the general public were consulted [reading]:

Mr. YOUNG. Simply volunteer workers?

Attorney General PALMER. Voluntary workers for the purpose of dealing with the question of what is a just and reasonable profit in that particular community; a decentralized agency for the purpose of giving the public knowledge which would be reflected in a jury box when a man is brought before a jury upon the charge of charging an unreasonable or unjust rate. We have already secured the cooperation of 36 of the Federal food administrators, and we will have most of them; some have been delayed in accepting because they are away from home, or something of that kind.

These fair-price committees are being organized in all the larger cities and counties of the country, and they are making and will make investigations which will apply to the community alone.

I think it is fair for me to say that he did not consult such a committee. All that he says is that he consulted some of the leading consumers, and it does not appear that he consulted such a committee as is indicated as a fair-price committee, so-called, so that it appears that I am a little more justified than I thought I was at first.

Mr. WHALEY. Your judgment is, then, that the district attorney, instead of consulting the consumers and the producers, ought to have taken somebody else in? Now, who else?

Mr. TINKHAM. He suggests—

Mr. WHALEY. Whom do you think he ought to have taken in?

Mr. TINKHAM. I am only taking his suggestion.

Mr. WHALEY. What methods would you pursue?

Mr. TINKHAM. I should ask some experts.

Mr. WHALEY. Who are the experts?

Mr. TINKHAM. I should think I should get some men who were familiar with the trade, and find out what the crop conditions were, and inform myself in a general way on the technical side of the situation, and see what was fair.

Mr. WHALEY. Let me ask you something. If they had a jury trial in this case, would not the jury most likely have some consumers on it?

Mr. TINKHAM. Most likely. We all consume sugar.

Mr. WHALEY. What would be the difference between submission to a jury and determination on the other proposition?

Mr. TINKHAM. Just the difference between ordinary, orderly procedure and——

Mr. WHALEY. I am asking you what is the difference?

Mr. TINKHAM. The difference is in orderly procedure and what orderly procedure requires. You would not submit a case to the ordinary man on the street or to 12 men picked up in that way. In the law you would call your jury in in regular form and submit the case in regular form to the jury.

Mr. WHALEY. Whom would you have submitted this thing to before a rise in prices?

Mr. TINKHAM. You mean if I was——

Mr. WHALEY. If you were the prosecuting attorney?

Mr. TINKHAM. I should have asked for a report as to the condition of crops, probably, from the Agricultural Department. I then should have talked with the men who were in the brokerage business there and found out what the general market for sugar was, what a fair price was, what the conditions were, and what the costs were.

Mr. WHALEY. Well, are not the brokers concerned in the matter?

Mr. TINKHAM. Yes; of course, so far as the Attorney General——

Mr. WHALEY (interposing). Well, does not the Department of Agriculture get their information from the producer?

Mr. TINKHAM. Yes.

Mr. WHALEY. Well, if you go to the original sources it is better than going to intermediaries, is it not?

Mr. TINKHAM. Yes.

Mr. WHALEY. Then, what good would have been accomplished if you had gone to the Agricultural Department instead of to the actual producers?

Mr. TINKHAM. If I went to the actual producers, and they knew that that I was trying to fix prices of their commodities, they might give very different information, or lay very different emphasis on things than they would if they simply knew that a general Agricultural Department expert was asking for information.

Mr. WHALEY. What was the market value on sugar on November 8, 1919?

Mr. TINKHAM. The market value of which sugar?

Mr. WHALEY. Of Louisiana clarified sugar and Louisiana clear granulated sugar?

Mr. TINKHAM. I do not know.

Mr. WHALEY. Then you do not know whether 18 cents was above or below the market price?

Mr. TINKHAM. No; I do not.

Mr. WHALEY. Then, if it was below the market price it was a reasonable price?

Mr. TINKHAM. If it was below that for some, it could not have been below for all.

Mr. WHALEY. But what I am getting at is that you have to have standard of price in order to determine whether 17 cents or 18 cents was fair, do you not?

Mr. TINKHAM. But I am saying it is entirely unfair and illegal to have any standard of price. I think that is entirely wrong, just as it would be to set a price for all wheat in the country now.

Mr. WHALEY. Well, I think you are running away from the question.

Mr. TINKHAM. You think I am, do you?

Mr. WHALEY. Yes.

Mr. TINKHAM. Well, I want to be fair, and I want to answer any question that you may ask.

Mr. WHALEY. I am asking you how you would fix that price, unless you have some standard to go by. Now, if the standard is the market value, I ask you what the market value is. You generally have some standard to go by, do you not?

Mr. TINKHAM. I surely do.

Mr. WHALEY. Then I ask you what the market value of sugar was?

Mr. TINKHAM. I am sure I do not know. The district attorney at New Orleans says, in his telegram of November 7, that—

Prime yellow clarified sold on the open market in New Orleans yesterday at 20½ cents; market virtually bare, with ready buyers for all sugar of that grade at that price.

Mr. WHALEY. Well, that was the market value, was it not?

Mr. TINKHAM. Yes.

Mr. WHALEY. And the price that the Attorney General fixed was below the market value, was it not?

Mr. TINKHAM. At that time; yes.

Mr. WHALEY. Well, do you think it was an unfair price because it was 2 or 3 cents below the market value?

Mr. TINKHAM. I know nothing about the market price. If that was the market price I suppose it was a fair price; but what I challenged is the setting of any price and the applying of that price to all the conditions in Louisiana, and setting up a prima facie case in a written agreement. I say that there was no authority of law for that; that it was entirely irregular; that it tended to tyrannize both over property rights and over the liberty of the people.

Mr. HUSTED. Well, if you accept the market price of foodstuffs as a fair and reasonable price it would be pretty difficult to punish anybody for profiteering under these conditions, would it not? Do you think the market price, under the conditions as they exist to-day in the case of food commodities, bears any true relation to a fair and reasonable price?

Mr. TINKHAM. It would seem not, in certain directions, but I do not know.

Mr. WHALEY. Your idea, is, then, that they ought to go in and prosecute every man who sells anything in this country to-day, whether he is selling at a fair price or not, to see whether he is selling at the market price, is it?

Mr. TINKHAM. To prosecute every man? No.

Mr. WHALEY. If he is selling at the market price now—

Mr. TINKHAM (interposing). But the market price might be—

Mr. WHALEY (continuing). You would investigate to see whether he is making a bigger profit than he ought to make?

Mr. TINKHAM. It seems to me that that is the only legal way that you could proceed.

Mr. WHALEY. Do you not know that that would be an absurdity? That you could not prosecute every man who is in business to-day?

Mr. TINKHAM. I do not say you could prosecute every man, any more than you could prosecute every corporation under the general antitrust laws.

Mr. HUSTED. As I recall the telegram of Mr. Mooney to the Attorney General and the Attorney General's reply, Mr. Mooney stated that he had made this tentative arrangement for 17 and 18 cents a pound, although sugar had been selling on the market the day before at a considerable advance over that price?

Mr. TINKHAM. Yes.

Mr. HUSTED. Now, the Attorney General's reply to that, as I remember it, was that he considered 17 and 18 cents as rather a high price. So that shows that, even in the opinion of the Attorney General, the market price of Louisiana sugar, on the day on which it sold at 20½ cents was more than a fair and reasonable price. He even thought 17 and 18 cents was too high.

Mr. TINKHAM. If you want to take up a line of special reasoning, and I want to say this to the honorable Representative from North Carolina—

Mr. WHALEY. From South Carolina.

Mr. TINKHAM. Excuse me; from South Carolina. That if the Attorney General thought that 17 and 18 cents was high, and sugar was selling at 20 cents; and had sold at 27 cents, he was derelict in his duty in not prosecuting those men for profiteering. But I do not want to argue that in this way. I want to argue this question on general principles, in a broad way.

Mr. SUMNERS. Well, in the exercise and the rather practical discharge of the duties of prosecuting officer, as a matter of fact, he is compelled to make some sort of preliminary examination, is he not?

Mr. TINKHAM. Of course.

Mr. SUMNERS. Before he institutes a prosecution?

Mr. TINKHAM. There is no question about that.

Mr. SUMNERS. And when he has made his examination, of course, he must exercise his judgment and discretion as to whether or not a prosecution shall be instituted?

Mr. TINKHAM. That is correct.

Mr. SUMNERS. Now, then, from the standpoint of the proper exercise of discretion, what difference would there be in the examination into the particular case of each individual planter, which would, from a practical standpoint, be very difficult, and an examination into the general conditions with reference to the general class of planters, taking a group of planters engaged in the production of one commodity, and arriving at a determination which would put the matter at peace and give everybody interested in the subject something to depend upon? Now, I am asking that question; and I do not mean to state it as a criticism, but I would like to have your judgment on it?

Mr. TINKHAM. I do not know that I quite understand the question. Will you simplify that? Just state your question again, please, because I want to answer it.

Mr. SUMNERS. Yes, I will state it again. Now, let us say here is a prosecuting attorney, and here is the State of Louisiana. In order to institute, in fairness to the citizen engaged in sugar production, a prosecution against any individual planter, it would be the duty of the Attorney General to make some investigation, would it not?

Mr. TINKHAM. No.

Mr. WHALEY. Why not?

Mr. TINKHAM. Because I thought this was a clearer and plainer and more appropriate case, and because I had the facts in this case very much more clearly before me than in any other case.

Mr. HUSTED. You had documentary evidence in this case, did you not?

Mr. TINKHAM. I had the telegram of the Attorney General.

Mr. HUSTED. Did you have documentary evidence in any other case?

Mr. TINKHAM. I had no documentary evidence except in this case.

Mr. WHALEY. Have you tried to get any?

Mr. TINKHAM. No; because my time has been completely absorbed in studying this particular Louisiana situation.

Mr. WHALEY. As a matter of fact, Louisiana is down South, and it is a Democratic State, and the beet-sugar people up North are in Republican States, are they not?

Mr. TINKHAM. I do not know.

Mr. WHALEY. Well, they tend to be Republican, do they not?

Mr. TINKHAM. Well, you would not suggest, would you—

Mr. WHALEY (interposing). I am not suggesting anything; I am simply asking the question.

Mr. TINKHAM (continuing). You would not suggest that, on account of political bias, I would take action in a matter of this great moment, would you?

Mr. WHALEY. I am satisfied that you would be absolutely impartial, so far as political lines are concerned.

Mr. HUSTED. If you wanted to particularize, you could pick out the Northwestern States beet-sugar situation, where they were told that they could charge 10½ cents, could you not?

Mr. WHALEY. I am just trying to find out why he picked out this particular case. If you could get two indictments against a man, Mr. Tinkham, would it not be better to do so?

Mr. TINKHAM. Well, in this case I thought this one was sufficient.

Mr. WHALEY. Well, if you could convict him on both indictments it might be better?

Mr. TINKHAM. There might be some confusion in doing that.

Mr. WHALEY. Well, why do you not convict him on both, if you think he has been guilty in both cases?

Mr. TINKHAM. Do you want my frank answer?

Mr. WHALEY. Yes.

Mr. TINKHAM. The beet-sugar situation was not brought to my attention until later than the Louisiana situation was and I had no evidence on it, such as I have in the Louisiana situation.

As a matter of fact, I will tell you exactly how I happened to take up this case. As I told you, on the 30th of June I introduced a resolution for an investigation of the general sugar situation by the Federal Trade Commission. I became more familiar with the sugar problem and situation. One day I saw in the Washington Post a dispatch from Louisiana which said that the Attorney General had fixed a price at 17 and 18 cents for Louisiana sugar. I was familiar enough with the sugar situation, the price of sugar, and the Lever Act to know that he had absolutely no authority to do that.

is indictable by the Grand Jury if he sells sugar in excess of that price. He then goes to the jury, and if he can convince the jury that he is innocent, or that he is not guilty, then, like any other man, of course, he is free.

Mr. SUMNERS. You do not mean he becomes guilty; but he becomes charged with an offense.

Mr. TINKHAM. He becomes charged with it; but he is presumed guilty until he is found innocent under a *prima facie* case.

Mr. HUSTED. Suppose the Attorney General had a right to do what he did in the case of sugar, could he not, then, within reasonable limits—perhaps considerably in excess of a fair and reasonable price—have fixed the prices of all the commodities covered by the Lever Act throughout the country?

Mr. TINKHAM. The only authority he had was under the Lever Act, to prosecute for profiteering. Now, if, under the Lever Act, or under any other act, he claimed he had the authority to do what he did in Louisiana, then he could control the price of every commodity that is dealt in in the United States.

Mr. HUSTED. Every commodity that is covered by the Lever Act?

Mr. TINKHAM. Yes, that is covered by the Lever Act; it would have to be one that was covered by that act, of course.

Mr. HUSTED. Now, as a matter of fact, did he take any action toward fixing the price of sugar in any other section of the country?

Mr. TINKHAM. I understand that he did; but whether he took it by a written agreement, as in this case, by setting up a *prima facie* case, or simply by sending out a notification, I do not know; but I understand the beet-sugar producers of the Western States were told that they could charge, I think it was 10 or 10½ cents, and I think in Michigan beet-sugar producers were told that they could charge, I think, 11½ cents.

Mr. HUSTED. Do you mean to say that the Attorney General told the beet-sugar producers that they could not sell for more than 10½ cents when he told the Louisiana sugar producers that they could sell for 17 or 18 cents?

Mr. TINKHAM. Those, I understand, are the facts.

Mr. WHALEY. Well, how did he arrive at the 10-cent or 11-cent price for beet sugar? Do you think he was wrong there?

Mr. TINKHAM. I do not know. I do not know what he did in that case, but I do know what he did in the Louisiana case.

Mr. WHALEY. If what he did in Louisiana was wrong, in fixing the price of sugar, and if he also fixed the price of beet sugar, he must have been wrong in that case also?

Mr. TINKHAM. Well, he might not have done the same thing in the two cases.

Mr. WHALEY. But your contention, as I gather, is that the Attorney General had no power to fix the price; is that correct?

Mr. TINKHAM. That is absolutely correct?

Mr. WHALEY. Therefore, if he fixed it at two different places, he is wrong in both places, is he not?

Mr. TINKHAM. So far as the authority to do it is concerned, I should say he was.

Mr. WHALEY. Well, you have not included in your resolution any contention against the beet-sugar people, have you?

50 INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR.

(The statement referred to was subsequently furnished by Mr. Tinkham and is as follows:)

Cost and freight quotations per pound for 96° Cuba centrifugals, prompt shipment to New York, net cash (without duty).

Year.	Highest.	Lowest.	Average.	Year.	Highest.	Lowest.	Average.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
1900.....	3.315	2.565	2.881	1917.....	6.50	3.8125	5.208
1901.....	2.687	1.97	2.362	1918.....	5.88	4.985	5.014
1902.....	2.31	1.565	1.857	1919.....	12.50	5.88	16.354
1903.....	2.225	1.815	2.035	1920—Jan. 8.....			12.00
1904.....	3.50	1.97	2.628	Jan. 15.....			12.00
1905.....	3.875	2.06	2.918	Jan. 22.....			12.00
1906.....	2.73	2.00	2.316	Jan. 29.....			12.00
1907.....	2.69	2.03	2.396	Feb. 5.....			12.00
1908.....	3.125	2.31	2.713	Feb. 11.....			11.00
1909.....	3.09	2.25	2.646	Feb. 19.....			9.25
1910.....	3.09	2.44	2.828	Feb. 26.....			9.125
1911.....	4.60	2.06	3.090	Mar. 4.....			10.50
1912.....	3.44	2.41	2.904	Mar. 11.....			10.00
1913.....	2.44	1.875	2.150	Mar. 18.....			11.00
1914.....	5.50	1.875	2.745	Mar. 25.....			11.75
1915.....	4.19	2.625	3.626	Apr. 1.....			13.00
1916.....	5.625	3.50	4.767				

¹ Including some new crop quotations.

Yearly averages, 1900-1919, from Willett & Gray's Weekly Statistical Sugar Trade Journal, January 15, 1920, p. 23. Weekly quotations for 1920 taken from same journal on the dates given.

(Thereupon, at 12.20 o'clock p. m., the committee adjourned until Wednesday, April 7, 1920, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, Washington, D. C., April 7, 1920.

The subcommittee assembled at 10.30 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. Mr. Tinkham, the committee is ready to hear you now, if you are ready to resume your statement.

STATEMENT OF HON. GEORGE HOLDEN TINKHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS—Resumed.

Mr. TINKHAM. Mr. Chairman, there are two points that I want to speak of, involving the testimony of yesterday, although bearing upon irrelevant matters in the discussion.

One of the points is this: That the food control act contains this provision:

SEC. 24. That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this act, etc.

That shows that it was the plain intent of Congress that this act should not terminate until the end of the war, as actually determined by a proclamation of the President.

Other evidence on the point of war powers that I desire to present is the determination by the Supreme Court in the case of *Rupert v. Coffey*, January 5, 1920, in relation to the construction of the Volstead Act. The Volstead Act was not passed until October 28, 1919, and although there was no authority in Congress except under the war powers to pass such an act, the Supreme Court held that it was thoroughly competent as a war act, although the armistice had been signed nearly a year before.

Mr. WHALEY. That was as to war-time prohibition, and not as to constitutional prohibition?

Mr. TINKHAM. Yes; as to war-time prohibition.

Mr. WHALEY. The Volstead Act covered both.

Mr. TINKHAM. But in the particular case I am citing it was a determination of the constitutionality of the Volstead Act, as it applied under title 1, which was war-time prohibition.

Mr. SUMNERS. No question has been raised, has it, that the termination of actual hostilities in effect repealed or suspended the war-time legislation?

Mr. TINKHAM. Well, I thought there was a question raised in relation to that by you yesterday.

Mr. SUMNERS. I raised the point that the President was charged with the responsibility of ascertaining that any given act under those powers was for the national defense, because that exact language was contained in the act. But I did not mean—and if you so understood me, you did not understand me correctly—that the actual termination of hostilities in effect either repealed or suspended the legislation to which you have referred.

Mr. TINKHAM. Now, that, I really do not think, is involved in the issues before this committee.

Mr. HUSTED. I would suggest that you go ahead with your main case, Mr. Tinkham.

Mr. TINKHAM. There is one further statement that I want to make, Mr. Chairman, and that is this: That I am informed that in 1918 the Louisiana crop was not bought by the Equalization Board, but a contract was made by which the Louisiana crop was to be sold by its owners at a fixed price.

Mr. WHALEY. Is that a fact, Mr. Tinkham, or is it just an opinion that you have?

Mr. TINKHAM. I understand it is a fact, or I should not give it to the committee.

Mr. WHALEY. I just wanted to get at whether it was a fact.

Mr. TINKHAM. Mr. Chairman, I want to state that the issues before the committee are comparatively narrow, and in order that they may be presented without extraneous matters, I am going to ask the chairman to protect me, until I have finished with my statement, against questions: and at that time I shall be very glad to answer any questions, but for a proper presentation, in the logical way, I believe that the only way for me to proceed will be for me to make the entire statement at this time without interruption.

Mr. HUSTED. Unless there is objection by the committee, you may proceed without interruption.

Mr. WHALEY. That will be perfectly agreeable to me if we can do this: As he takes up each point—as I understand, he has five points.

Mr. TINKHAM. Yes.

Mr. WHALEY. As I understand it, we ought to cross-examine him on each point as it comes up, and not try to carry in our heads all that the witness has stated on all the five points, and then go back and ask him questions.

Mr. CLASSON. Let him discuss the points first.

Mr. HUSTED. Yes; we will let him discuss the points first without interruption; and then each member of the committee, in the order of their appointment, can ask him any question he desires.

Mr. TINKHAM. May I suggest, Mr. Chairman, that I make my presentation in accordance with the interrogatories, so that I can offer all of my evidence and statements at the end of each interrogatory and answer. I shall be perfectly willing to be questioned on each of the issues raised.

Mr. HUSTED. Well, you may proceed in that way.

Mr. TINKHAM. It was interrogatory No. 2 that I was discussing yesterday when the committee adjourned. Interrogatory No. 2 is as follows:

Upon what authority of law he, the Attorney General, has fixed or agreed that the price of Louisiana sugar at the plantation shall be 17 cents per pound for yellow clarified and 18 cents per pound for plantation granulated?

And his answer, you will remember, was—

As to paragraph 2, in view of my answer to paragraph 1, I deem no further answer necessary.

I called to the attention of the committee and told them that I desired them to take judicial notice of Revised Statutes, title 8, sections 346 and 387, which established the Department of Justice and gave powers to the Attorney General, and the amendments thereto, which contain no power such as the Attorney General exercised in fixing a prima facie case in the telegram of November 8.

I then offered the Lever Act, as amended, for the committee's study, to see that no power to fix prices or establish a prima facie case by the Attorney General was given under that act.

And I was reading, and will now continue to read, the testimony of the Attorney General when the amendments to the Lever Act were before the Committee on Agriculture of the House, on August 20, 1919; and the very matters and very points involved in his authority to do what he did in Louisiana were then being discussed.

I will now continue to read where I left off yesterday, on page 79 of those hearings before the Committee on Agriculture:

Mr. YOUNG. Right in that connection: A thing to be a crime must be denounced as such, as defined by a statute; there must be a statutory definition of the thing which constitutes the crime. To illustrate, if a man is charged with a theft your indictment follows the statute of the State, if it is a State law.

Attorney General PALMER. Yes.

Mr. YOUNG. And the court has to charge in its charge to the jury this statutory definition. Now, the thing that addresses itself to my mind, from the legal point of view—I will use a concrete case: Suppose in my town, under the statute which we are seeking now to amend by the suggestion that you made, a merchant sells a pair of shoes for \$20; it is believed to be an outrageous and profiteering price. Where is your legal authority? How would you proceed against that particular individual under the law that we have sought to be amended by the suggestion that you have made?

Attorney General PALMER. We would charge him, in the language of the act, with having sold a pair of shoes at an unjust and unreasonable rate—following the language of the act—"to wit, the price of \$20," and prove to the jury that that was an unjust and unreasonable rate.

Now, what is in your mind is this: I know what is in your mind—

Mr. YOUNG (interposing). I want to know where the burden of proof would lie. You would have to prove, as the prosecuting authority, would you not?

Attorney General PALMER. I think so.

Mr. YOUNG. You would not shift the whole burden back on the individual?

Attorney General PALMER. No; I do not think we would.

Of course, it has been contended that you can not define as a crime a thing which is so indefinitely stated as the language "unjust and unreasonable" would imply.

On page 82 of this same hearing, Mr. McLaughlin of Michigan asked this question:

Mr. McLAUGHLIN of Michigan. Why not this organization you are speaking of enlisting the services of all the State organizations?

Attorney General PALMER. Because if the volunteer who is serving upon a committee knows that he is fixing a price which is prima facie evidence of the guilt of every man who sells beyond that price, we can not get him to serve. He will advise us; he will fix a price, what he thinks it ought to be, with the understanding that we will take the man into court and try it out there on the same facts as presented to him; but he won't put himself in the position of prosecutor, trial judge, and executioner at the same time. You can not ever get that committee to operate. You will have to have a central committee here in Washington, appointing and directing them to operate. That can only be done in one of two ways: Either to rebuild the Federal Food Administration or to have the President place that power in the hands of the Department of Justice. And I think it would be an unthinkable thing to expect the Department of Justice, through these committees which are now serving, to fix a price which determines, in advance of a trial, the guilt of any man. Why, I would not take that power, because I am practically saying, "You are guilty; you have to go into court and prove your innocence."

And yet, in the telegram of November 8, that is exactly what the Attorney General did, when he fixed the price, and asked an agreement that the prices should be fixed, as prima facie evidence.

Then it goes on as follows:

Mr. JONES. And the retail prices vary in different towns, too, and under different conditions?

Attorney General PALMER. Sure.

The CHAIRMAN. The way the act is drawn it leaves it to the discretion of the department or to the President what course to pursue; if he does not find the one practicable he can pursue the other.

Attorney General PALMER. I repeat that even if you put it in here in alternative language, even if you say, "Nothing in this section shall interfere with the penalties imposed for the prohibitions set out in the first section and in section 4," that still in every case you got to the jury it would argue that the defendant had not been treated right in this matter, because the Congress authorized the machinery to determine what was the reasonable price at which he should sell his goods. We would never get a conviction, never scare anybody with that.

Mr. McLAUGHLIN of Michigan. Then, if those provisions are not put in you will have no regulatory or preventive proposition at all. It is all by way of arrest and prosecution, and there will be nothing regulatory or preventive except the effect of an arrest and a prosecution.

Attorney General PALMER. Except this volunteer scheme that I have spoken to you about, which is extralegal, I admit.

Mr. VOIGT. Wouldn't it be a good thing to have this subdivision 2 of section 2 to apply in specific cases? Suppose you had notice of a certain man who was profiteering, and you then sent a representative to him on the ground that you have found the facts, and then, by direction of the President, served a notice on him as provided in subdivision 2, wouldn't it be a benefit to you?

Attorney General PALMER. You would not have the President take up each case, would you?

Mr. VOIGT. No; I mean it would be done by general direction of the President.

Attorney General PALMER. You would have the Department of Justice do it?

Mr. VOIGT. Let the President create some one who would do it.

Attorney General PALMER. You would either have to give it to some one of the present agencies or create a new agency.

Mr. VOIGT. Suppose you found 100 cases in the country, or 50 cases, where it would be advisable to apply a section of this kind; it would not burden one unduly to be charged with carrying it out?

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Attorney General PALMER. If it is only a hundred cases, forget the whole business; that would not help us any.

Mr. VOIGT. It looks to me as if you were given by subdivision 2 an additional weapon, which you might use if you found those cases.

Attorney General PALMER. I am fearful that it is a weapon that will be a two-edged sword. We can not get it in use in time unless the President vests that power in the Department of Justice. And for the Department of Justice to use that, it is for the purpose of giving the department the power to say what is a fair price, and then we would have to say whether the man is guilty or not.

That is exactly what I claim. And I submit to the committee that the Attorney General did, in his telegram of November 8, namely, fix a prima facie case and declared the individual to be proceeded against guilty and put him on a proof of his innocence, rather than, as we do under our system of law, assume that a man is innocent until he is proved guilty. Then it continues:

Mr. VOIGT. Some one has always had that power under section 5, and under subdivision 2 here is practically the language that is in section 5.

Attorney General PALMER. Except that it was punishable under section 5 by removal of the license so far as the wholesalers are concerned, and, indirectly, so far as the retailers are concerned. And now we propose to make it punishable by fine and imprisonment. It is quite a different thing, I take it, for an executive to determine a thing which is prima facie and entitles another officer to take away a license from a dealer, and to determine a prima facie case against him which sends him to the penitentiary.

That is what Attorney General Palmer said, when the very law that he was acting under was being discussed, and in which he was only given the authority that he asked for, and in which he was given no authority to establish, by executive action, prices or fix a prima facie case.

The next evidence that I want to offer, under the interrogatory concerning his authority, is a statement of Assistant Attorney General Figg, in a hearing before a subcommittee of the Committee on Agriculture of the United States Senate on October 3, 1919, in relation to sugar:

Mr. MARTIN. In the event the Sugar Equalization Board does not continue in existence and continue to control sugar, does the Department of Justice contemplate taking action under the food-control act amendment now pending?

That referred to the amendment that Mr. Palmer was discussing on August 20, 1919, before the Committee on Agriculture of the House.

Mr. WHALEY. That amendment was to give the Sugar Equalization Board an extension of life, was it not?

Mr. TINKHAM. No.

Mr. WHALEY. Well, what was the amendment, so that we can understand it?

Mr. TINKHAM. That was the amendment to the Lever Act for the prosecution of profiteers, as requested by Attorney General Palmer.

I think that quotation that I have just read answers the question of the honorable Representative from South Carolina. Mr. Martin says:

In the event the Sugar Equalization Board does not continue in existence and continue to control sugar, does the Department of Justice contemplate taking action under the food-control act amendment—

Food-control act amendment—that means the amendment to the Lever Act; and he adds the words "now pending." Then it continues:

Mr. FIGG. The Department of Justice could not take action under that, only in so far as the individual cases of profiteering are concerned.

Mr. MARTIN. But in doing that you would have to fix a fair price.

Mr. FIGG. That would be purely a matter for the court. There would be no one in the Department of Justice to say what would be considered a fair profit.

Mr. MARTIN. The amendment as to fair-price committees was stricken out of the bill?

Mr. FIGG. Yes; that was stricken out.

So that the assistant to the Attorney General, who, as I understand it, at that time was in charge of the sugar cases, said that there was no authority in the Department of Justice to do anything in connection with profiteering on sugar except to prosecute the individual cases, provided the amendment went through, as it subsequently did—that is, the amendment to the Lever Act giving the right to prosecute profiteers.

Now, the next point—

Mr. WHALEY (interposing). Do you agree with Mr. Figg's contention?

Mr. TINKHAM. I do.

Mr. WHALEY. Your judgment is, then, that you could not have any discretion at all, there is no one that could have any discretion, either the prosecuting attorney or anyone else, and that the only remedy would have been to prosecute every one of the sugar producers and have each one of them come into court and prove that he is innocent?

Mr. TINKHAM. May I ask that that question be suspended until I present my next evidence under this interrogatory?

Mr. WHALEY. I thought you had finished on that.

Mr. TINKHAM. No. Now, I want to offer the statement of the Attorney General himself on the point of his own authority to act as he did in this Louisiana case. There was inserted in the Congressional Record on December 5, 1919, page 211, by Mr. Byrnes of South Carolina, a statement which Mr. Byrnes said he had been authorized to make by the Attorney General, and which had been made by the Attorney General, in reference to sugar. This is the statement:

A conference has been held this morning between representatives of the Sugar Equalization Board and the Department of Justice, in which the sugar situation was reviewed. The Department of Justice has neither the power nor the facilities with which to control the purchase or distribution of sugar. The only governmental body having this power is the Sugar Equalization Board, and its control terminates on December 31. The Congress, although requested to do so, has failed to extend the life of the board. The Department of Justice will confine its efforts in the future, as it has in the past, to the enforcement of the provisions of the Lever food control act, as amended, by prosecuting all instances of sales of sugar for an unjust or unreasonable profit.

The Department of Justice has never attempted to fix the price of sugar. It has accepted in the past the recommendations of the Sugar Equalization Board very largely in determining maximum fair prices. The fair margins of profit allowed are those established by the Food Administration. When such determinations were made, they have been communicated to the district attorneys, who were advised that any sales in excess of the maximum figure set should be considered unfair and unreasonable. The early termination of the board will make it impossible to set any definite price on sugar in the future or control its distribution. Every sale will be treated on its own merits, and in all cases where the district attorney has evidence indicating an unfair profit or withholding of sugar from the normal consumptive channels, or any discrimination in price to the manufacturer or to the jobber supplying the domestic consumer, he will proceed under the Lever food control act.

Mr. Chairman, I have submitted to you, first, statements of Attorney General Palmer himself, in explanation of what powers he

should have, and the objections to a prima facie case—the right of agreeing, or, rather, setting up a prima facie case under which prosecutions could be had.

I have offered to the committee a statement of the assistant of the Attorney General, in which he says that the only right in the Department of Justice is to prosecute individual cases. And finally, I have offered the statement of the Attorney General himself, of December 5, 1919, in which he says that the policy of the Department of Justice is that they have no right to fix prices, and that the policy of the department is only that of prosecuting where profiteering has been shown in each individual case.

Now, I am ready to be questioned, Mr. Chairman.

Mr. HUSTED. What was the voluntary scheme, Mr. Tinkham, that the Attorney General referred to in his statement before the House Committee on Agriculture?

Mr. TINKHAM. On page 79 of the hearing of August 20, 1919, before the House Committee on Agriculture, the Attorney General said, in explaining what he meant:

And our method or our proposition to determine to the satisfaction of a jury what is a fair and reasonable price is this: We have called upon the former State food administrators, not to organize their food administration, but simply to organize in the cities and counties fair-price committees, which we have asked to be composed of a wholesaler, a retailer, a representative of labor, representatives of housewives, and representatives of the general public.

Mr. YOUNG. Simply voluntary workers?

Attorney General PALMER. Voluntary workers for the purpose of dealing with the question of what is a just and reasonable profit in that particular community; a decentralized agency for the purpose of giving the public knowledge which would be reflected in a jury box when a man is brought before a jury upon the charge of charging an unreasonable or unjust rate.

Mr. HUSTED. Do you know whether they happened to have such a voluntary organization in Louisiana at the time these prices were fixed?

Mr. TINKHAM. I do not.

Mr. HUSTED. Mr. Whaley seemed to intimate, in a question to you, that there were only two ways of determining this question as to what was the fair and reasonable price for sugar at the time. One was by prosecuting every individual violator of the law, and the other was the method which was adopted by the Attorney General.

Now, was there not another method, and was not that the ordinary and proper method in such a case, namely, to make a test case; to prosecute some one individual and establish as a result of that prosecution and by the verdict of the jury what was a fair and reasonable price?

If that had been done by the Attorney General, it would not only have affected that particular individual, but it would have been a guide which all persons selling sugar on the plantation in Louisiana would have been compelled to follow, unless the circumstances under which their sugar was produced were exceptional, in order to escape prosecution; is that correct?

Mr. TINKHAM. There was that method, it seems to me.

Mr. HUSTED. Well, is not that the usual and ordinary method in such cases, to bring a test case and in that test case determine the facts by the verdict of the jury?

Mr. TINKHAM. I should say that was the ordinary method. I think that was the method that was pursued under the antitrust laws, where

there were test cases brought for the court to determine in the particular case, on a certain set of facts, which were more or less typical of a class.

Mr. HUSTED. I notice in the course of your remarks, and in quoting from the statement of the Attorney General, that he charged Congress with refusing to extend the life of the Sugar Equalization Board, although Congress had been frequently requested to take such action. Now, is that in accordance with the facts?

Mr. TINKHAM. It is not.

Mr. HUSTED. Did the Sugar Equalization Board ever request Congress to extend its life?

Mr. TINKHAM. They never did; nor did the President. I was going to take that question up, Mr. Chairman, at the end of my reading of the interrogatories and answers; and if you will allow me to do so, I will take the matter up in detail at that time. That is a statement which I claimed, in opening my case to the committee, was absolutely false and which I thought the committee should take some action on in a legislative way.

Mr. HUSTED. I have no further questions at this time. Mr. Whaley, have you any questions?

Mr. WHALEY. The chairman has asked you if you did not think it fair to arrest one man and make a test case out of him in Louisiana. Do you think that is a proper course, to arrest a man and stamp him as a criminal and try him? Or do you think it was the proper course to have a fair-price committee, composed of the housewives and the general consumers of the community, and have them fix the price? Which do you think was the proper course of the two?

Mr. TINKHAM. I should have pursued a different course than either, in a preliminary way, under the law. It seems to me that the thing for the Attorney General, or his agents, to have done in Louisiana was, first, to make a careful investigation, which he could do by consulting those who knew about the traffic and the trade; the producers and the men in the Agricultural Department as to the crop conditions; and having carefully investigated all the factors, then have found a case in which he considered that the facts were such that there was not any question but what there was profiteering, and then have prosecuted that case.

Mr. WHALEY. Now, if he did pursue the course that you have outlined, you think he pursued the right course, do you?

Mr. TINKHAM. I should say that was the right course to pursue. He may have in Louisiana—I do not know what the criminal records show there—he may have prosecuted one or two or three; but if he did that, he should not have established, by agreement with the producers, a prima facie case by which he would be precluded from prosecuting for profiteering anyone who might be profiteering, at a price of that character.

Mr. WHALEY. Now, follow that a little further, will you?

Mr. TINKHAM. Very well.

Mr. WHALEY. Would you go on, after you had prosecuted two or three; would you go on and prosecute four or five? When would you think you had reached a fair basis?

Mr. TINKHAM. I would determine each case absolutely on its merits; in other words, as I understand it, there was a very great variety of differences in Louisiana. And it might well be that, in

certain parts of Louisiana, 17 and 18 cents was not enough; and in other parts of Louisiana 17 and 18 cents may have been altogether too high. And taking some typical cases, in the varying circumstances, I would have proceeded. I understand, the profiteering laws—what was intended to be accomplished by them—was that cases should be brought, and those cases should have publicity, and that publicity should restrain, rather than that everyone should be prosecuted, or that people should be prosecuted who were, perhaps, technically but not outrageously violating the law. In other words, the prosecuting statutes were passed, quite largely, for their moral effect, in having the Attorney General and his assistants to bring cases against alleged profiteers, where profiteering, in fairness was judged to exist, after a careful examination.

Mr. WHALEY. Will you just follow that right on, and tell me how he could have found an indictment against a man for profiteering?

Mr. TINKHAM. Under what circumstances?

Mr. WHALEY. Under the definition given in the act, that a man shall not be guilty of profiteering—that he shall receive a fair and just profit. There is no standard fixed there?

Mr. TINKHAM. No standard at all.

Mr. WHALEY. How would you have brought your indictment in such a case?

Mr. TINKHAM. I think I read you what he said.

Mr. WHALEY. Would you have guessed at the price that the man got for his sugar in the indictment?

Mr. TINKHAM. I would not; I would have ascertained what price he got for his sugar.

Mr. WHALEY. Now, having arrived at that proposition and found out what he sold his sugar for, how would you have proved that it was an unreasonable price?

Mr. TINKHAM. Then the Attorney General would have to go into the question of what he bought it for.

Mr. WHALEY. How would you determine that? That is what I am trying to get at. The Attorney General has no power to go into a man's private business and examine into it before the man is indicted, has he?

Mr. TINKHAM. No; but sugar is a commodity which is sold on the market and records—

Mr. WHALEY (interposing). You would take the market price, would you?

Mr. TINKHAM. That would have a powerful influence, it seems to me.

Mr. WHALEY. That would be the standard on which he based his action, would it not—the market price—and if a man sold his sugar at more than the market price he would be a profiteer?

Mr. TINKHAM. He would be a profiteer.

Mr. WHALEY. But if he sold at the market price, he would not be a profiteer and would not be guilty?

Mr. TINKHAM. I should think it would be very hard to convict him in that case.

Mr. WHALEY. And therefore if a man in Louisiana was selling sugar at 18 cents, and the market price was 20 cents, you would not have brought an indictment against him, would you?

Mr. TINKHAM. I do not think I would.

Mr. BOIES. I would like to ask one or two questions, Mr. Chairman.

Mr. HUSTED. Very well, Mr. Boies.

Mr. BOIES. Suppose the Attorney General should enter into a most binding agreement with any man in business as to what price, or limit of price, would be considered a *prima facie* case; and it should be proven against the defendant in a case brought by the Attorney General that he had exceeded the price stated in that agreement; do you think that any court, sitting in the trial of a case of that kind, a case of profiteering by this particular man, would receive any testimony in relation to that agreement, or that the court would instruct the jury in any particular upon the agreement made between the individual and the Attorney General?

Mr. TINKHAM. I think it very hard to say what a court would do.

Mr. BOIES. Well, I mean under the law as you understand it.

Mr. TINKHAM. As I understand it, I suppose a judge would throw such a case out—would quash an indictment, if a motion to do so was made.

Mr. BOIES. No; the indictment is not based upon this agreement at all; it is based upon allegations that the man had profiteered. Now, would this agreement between the Attorney General and the individual, or several individuals, be recognized at all in the trial of a criminal case?

Mr. TINKHAM. I do not believe it would.

Mr. BOIES. Now, this committee, or board, that you speak of, made up of housewives, business men, and laboring men—the object of the establishment of such a committee was simply to furnish information to the Department of Justice, rather than to fix any price that might be used in the prosecution of a criminal action, was it not?

Mr. TINKHAM. That is my opinion.

Mr. HUSTED. Mr. Sumners, have you any questions?

Mr. SUMNERS. If in your judgment, then, this agreement, if entered into, would not be received for any purpose in the trial of a case, then you would not claim that the Attorney General had wronged anybody if he procured that sort of statement?

Mr. TINKHAM. That depends upon what may happen in any particular case, and also—

Mr. SUMNERS (interposing). Well, I say, if the thing was absolutely void, what harm did it do anybody?

Mr. TINKHAM. It is void, perhaps.

Mr. SUMNERS. Well, you gave that as your opinion, that it was void?

Mr. TINKHAM. I give that as my opinion; that is correct; that is void, perhaps, in the courts of law.

Mr. SUMNERS. Yes.

Mr. TINKHAM. But what the Attorney General did was this: He arbitrarily, where he had no right and no authority to do so, fixed a price, which was the price for the whole State, where farms varied in their productivity and in their crop conditions. If the price was a minimum price—that is, if the poorest man and if the poorest plantation could make a profit at 17 cents, he then gave to the richer planter, and to the planter who had a plantation where his crop was not injured, extortionate profits, and was bound not to proceed against him, because he had made the agreement that he would not, saying

that that was a price that he would allow. On the other hand, he arbitrarily fixed the price of 17 and 18 cents; and if that was the average price, then the man who could not make a profit on that was deprived of his property and right to reasonable profit, and deprived illegally, I claim, by this action of the Attorney General.

Mr. WHALEY. Well who was injured by that?

Mr. TINKHAM. The man who could not sell at a price that would show him a reasonable profit, to which he was entitled under the law, on the one hand; and on the other hand, the man who was allowed to make extortionate profits, because he had a plantation which was rich and well managed and because his crop was not injured, at 17 and 18 cents, could not be proceeded against because of this agreement by the Attorney General, which injured the public.

Mr. SUMNERS. Let me ask you this question: It is the fact that a prosecuting attorney is compelled to exercise his quasijudicial function in passing upon the probabilities of a violation of law before he institutes a prosecution, is he not?

Mr. TINKHAM. That is true; but he must act always within the law.

Mr. SUMNERS. Well, when you say, "He must act always within the law," you do not mean to say that there is any law which denies to the prosecuting attorney, not only the right, but imposes upon him the duty, in the exercise of the functions of his office, to avoid being unnecessarily oppressive; and that in order to do that, he must make preliminary investigations of some sort before instituting prosecutions; is that not the fact?

Mr. TINKHAM. Of course, he can make preliminary investigations; but he can not set up a *prima facie* case, and he can not make an agreement with the men who may become criminals under statute passed by Congress, where he has not brought a case into court, or taken a case to the jury.

Mr. SUMNERS. That is not a case—I do not want to interrupt the answer of the witness; but I want to suggest this thought: Now, then, if the Attorney General under the responsibilities of his office, is charged with that duty, when the Attorney General faced the Louisiana sugar situation as a practical proposition, he faced a situation where there were many planters, as you say, with a difference in the expense of producing their crops per unit of production. Now, the honorable chairman of this subcommittee expressed, as I understood him, the idea that the Attorney General should have picked out some individual case and prosecuted that case, and established by the results of that prosecution a precedent. But in that particular situation, was there not such a variety of conditions that no prosecution would have resulted in the establishment of a precedent?

Mr. TINKHAM. That I could not answer whether there was or was not, of course.

Mr. SUMNERS. Do you not believe that that was true?

Mr. TINKHAM. I believe it would have been rather difficult to have handled the situation.

Mr. SUMNERS. Yes.

Mr. TINKHAM. But, although difficult, the Attorney General, of all men, it seems to me, in the United States, should have kept within the law, and in this case he did not, in my opinion.

Mr. SUMNERS. Well, that is your opinion, of course.

Mr. TINKHAM. Yes; that question is before the committee, to determine.

Mr. SUMNERS. Yes. Now, he would have had difficulty, and I take it, that in your judgment it would have been impossible to establish any precedent by prosecution for the guidance of the people generally; and then, in order to determine whether there was a violation by any individual planter, there would of necessity have had to be a preliminary investigation of each individual planter, would there not?

Mr. TINKHAM. Of course, there would have had to be an investigation—

Mr. SUMNERS (interposing). Of each individual planter?

Mr. TINKHAM. No; not of each individual planter.

Mr. SUMNERS. Do you mean that he ought to pick out some man and railroad him to the penitentiary, and let another man who is equally guilty go free?

Mr. TINKHAM. I do not. I mean he would have to pick out some case where it would appear from the evidence that the man was charging more than he should charge, and make an investigation of that case upon the merits, and proceed if the facts warranted, thereby establishing a standard in that character of case.

Mr. SUMNERS. Well, would you not have had to investigate the other cases to see whether or not that was typical?

Mr. TINKHAM. I do not think so. I think he could have taken the case of an individual, as is done to-day, in many cases, to test the law.

Mr. SUMNERS. You recognize the difference between taking a typical case and testing with that, when you are dealing with producers, who are confronted with a great variety of conditions, and making a test case of the manufacturer where the expenses of manufacturing are stabilized, do you?

Mr. TINKHAM. I do not think it differs very much.

Mr. SUMNERS. You do not?

Mr. TINKHAM. No; every manufacturer has different overhead costs and different factors going into his expense.

Mr. SUMNERS. Now, here is another proposition: If we admit that the Attorney General owed the duty to the public, before he instituted a prosecution, to make a preliminary investigation, in a situation like that—if, as a matter of fact, the Attorney General made a preliminary investigation and determined that, from the preliminary investigation, 17 cents, as a general proposition, would not be profiteering, how would that differ in point of official responsibility—that is, having investigated a given case and made that determination—from his trying somebody in the court and attempting thereby to establish a precedent?

Mr. TINKHAM. Because he set, by his action, a price of 17 and 18 cents for the entire State, to affect every planter, or each planter, but many planters were not in the same condition, so far as production was concerned, and cost and condition of crop, thereby precluding himself from prosecuting where profiteering might have been shown, if those prices, in particular cases, or in certain parishes were too high, and also setting a price at which men whose crops had been badly damaged might not make a reasonable profit out of them.

Mr. SUMNERS. Well, they could make that reasonable profit; they could sell above 17 cents or 18 cents, and they would be in no greater danger of prosecution than they would be under the scheme which I understood you to think was proper.

Mr. TINKHAM. Well, I do not see how that is possible.

Mr. SUMNERS. Well, suppose a man sold it for 20 cents a pound; you might prosecute him, but you could not convict him, if that was not profiteering, could you?

Mr. TINKHAM. Well, I do not know how the court might rule.

Mr. SUMNERS. Do you mean—

Mr. TINKHAM (interposing). In my opinion, the judge would not have taken into consideration 17 and 18 cents; that is my personal opinion. But that has nothing to do, it seems to me, with the policy of the Department of Justice, in this case, or with the question whether the Attorney General did something that was legal or illegal; it does not seem to me that it has anything to do with that; and that is the only question, under this interrogatory.

Mr. SUMNERS. Well, the evidence is that the Attorney General did make an investigation among planters and consumers, and called a disinterested people before he determined that a price of 17 cents did not carry such probabilities of profiteering as to justify prosecution; that is what he did, is it not?

Mr. TINKHAM. Yes; and if he had stopped there, there would have been no question of this action, but he did not stop there.

Mr. SUMNERS. Well, that is starting from the lower end; that is for the purpose of exempting people from prosecution; if he had stopped there, you would not have complained of what he did?

Mr. TINKHAM. Of course not. May I make my theory of the case clear?

Mr. SUMNERS. I would like to get your theory on this one question first, that, if the Attorney General called in producers, and called in consumers, through his representatives, and got whatever information he could as to this general situation, in that State, where the people were engaged in a useful vocation, producing sugar, and there was uncertainty everywhere in that community as to what they could do in that community under the law, and every man faced the possibility of prosecution; he did not know what the situation was—now in that state of confusion and uncertainty and terror, the Attorney General goes in there, and he has to make a preliminary investigation anyhow in each case, before he institutes prosecution; and he called in those people, and he concluded, as a result of his investigation, that if the people did not sell above 17 cents in Louisiana there would not be profiteering, and stopped there, you would not complain, would you?

Mr. TINKHAM. Of course. I could not; he had the legal authority to do all of that.

Mr. SUMNERS. Yes. Well, now, with that half of the matter disposed of, then your complaint is that he said to men, who, possibly, would only get 17 cents, when they ought to have 25 cents, that if they sold for above 17 cents, they would be prosecuted?

Mr. TINKHAM. He had no legal authority. If 25 cents showed no unfair profit and the Attorney General prevented them from getting that 25 cents a pound by his action, then he has deprived men, ille-

gally and oppressively and coercively of what they are entitled to, and under no circumstances should anyone do that.

Mr. SUMNERS. Yes; and the thing that stood between the man who ought to have 25 cents and his getting 25 cents was not the peril of criminal punishment, but it was the peril of criminal prosecution that you complain of?

Mr. TINKHAM. The coercion; criminal prosecution, and possibly criminal punishment also. I do not want to pass upon what the courts might have done in Louisiana, or anywhere else, with a prima facie case set up by the Attorney General, and then the Attorney General being compelled, having set that case up, to go into court and insist before a United States judge that he had a right to do what he did do; I do not know what a judge might do under those circumstances. Personally, I know what I would do, but I do not know what every judge, or any judge in the United States courts might do under those circumstances.

Mr. SUMNERS. Do you think it possible, then, that a judge who was trying a man, where the evidence showed conclusively that 25 cents was a fair price, might send him to the penitentiary because, as you stated, the Attorney General had at some other time coerced him into signing an agreement not to sell at more than 17 cents? And the man would not be tried for having violated an agreement with the Attorney General, but he would be tried for having violated the antiprofitereing law. Do you think that would be possible, where the evidence showed that the man was not guilty?

Mr. TINKHAM. I do not know how much coercion can be used on United States judges. I do not know how much coercion can be used, but I know that the Attorney General's office has used a great deal of coercion in this particular case—and it seems to me illegally.

Mr. SUMNERS. Now, then, I want to ask you this question: If the Attorney General in view of that investigation should have determined that there was such a probability that a price above 17 cents was a profiteering price would it not then have been the duty of the Attorney General in that sort of a case, not having full inquisitorial powers, and independent of inquisitorial powers, to at least have instituted grand jury proceedings to determine whether that man was guilty of profiteering or not?

Mr. TINKHAM. I do not know that I quite understand your question.

Mr. SUMNERS. If, in that investigation down there by the Attorney General in that district in Louisiana, it had been determined, as it appeared to him that the probabilities were so great that there was profiteering by any given man selling above 17 cents, that at least, the inquisitorial powers of the grand jury ought to be availed of—if that was the determination in a case where any man sold for more than 17 cents would it not have been his duty at least to submit that matter to the grand jury?

Mr. TINKHAM. I think it was his duty, but I think he was precluded from doing it by this agreement; it seems to me that he was morally bound, when he had fixed that price, not to prosecute.

Mr. SUMNERS. I am not talking about that now; I am talking now about from 17 cents up; we disposed a few minutes ago of the proposition from 17 cents down.

Mr. TINKHAM. Yes.

Mr. SUMNERS. I am afraid my question was not altogether clear.

Mr. TINKHAM. I think perhaps it was not.

Mr. SUMNERS. I will try once more to make it clear. If, in that investigation—

Mr. TINKHAM (interposing). What investigation?

Mr. SUMNERS. The investigation where the testimony shows that he called in producers and consumers prior to this determination that resulted in the fixing of the 17-cent price. Now, if in that determination, the Attorney General should have concluded that a price above 17 cents carried with it such a probability of profiteering that the matter in such a case ought to be submitted, at least, to the Federal grand jury, if that was his honest determination; then would it not have been his duty, independent of anything that might have been done in the agreement in such a case, to have submitted that to the grand jury?

Mr. TINKHAM. I believe, of course, that he should have done it; but I think he was precluded from doing it after he made his agreement.

Mr. SUMNERS. No; his agreement was that, if they charged above 17 cents they would be prosecuted—or rather his statement was to that effect.

Mr. TINKHAM. Oh, you mean if the price of 17 cents—I did not understand what you meant. I see now. As I understand it, he could have prosecuted anyone who sold above 17 cents.

Mr. SUMNERS. Yes.

Mr. TINKHAM. Well, it would have been a prima facie case. Then, if he found, or could prove, that there was profiteering at over 17 cents, of course, he should have proceeded. There is no question about that.

Mr. SUMNERS. I will try again to get your answer to the question I have in mind: If, in that investigation, the Attorney General should have determined that, as a general proposition, in the Louisiana territory a price above 17 cents would carry with it such a suspicion of profiteering that, at least, the Federal grand jury ought to be called upon to investigate the case—do you follow me that far?

Mr. TINKHAM. That is, a price in excess of 17 cents?

Mr. SUMNERS. Yes.

Mr. TINKHAM. Yes.

Mr. SUMNERS. That is, from a general investigation, and from whatever information he could get, he had determined that a price in excess of 17 cents carried with it such a suspicion of profiteering that, at least, the matter ought to be investigated by the grand jury, it would have been his duty, in each of such cases, to have asked the grand jury to investigate it, would it not?

Mr. TINKHAM. There is no question about that.

Mr. SUMNERS. Well, then, what is the harm of his saying so?

Mr. TINKHAM. He entered into an agreement; he did more than say so. When a man enters into an agreement he is bound by it, and he is bound not to prosecute anyone who sold for less than 17 cents and 18 cents.

Mr. SUMNERS. Well, I am asking about the prices from 17 and 18 cents up; I am asking about the case of the man who sold at a price in excess of 17 and 18 cents.

Mr. TINKHAM. Of course, he was not precluded from prosecuting him; that was his prima facie case.

Mr. SUMNERS. That man would have stood in the same situation as he would have been in if the Attorney General had never made that agreement?

Mr. TINKHAM. That is true; only by his action he had established a prima facie case. That is, he attempted to establish a prima facie case; we do not know what the legal effect might have been.

Mr. SUMNERS. Of course, the court might hold that he had not.

Mr. WHALEY. Just one question: I gathered from what you said in answer to Mr. Sumners's question that your idea is that the Attorney General should not have said that he believed that to be a fair and just price; that he ought to have allowed them to get whatever prices they could, whether it was 20 cents or 25 or 30 cents, or any other price, and then prosecuted each man and made him show that the price he got was an unfair price, and that therefore he was profiteering?

Mr. TINKHAM. There would have been no harm in the Attorney General saying that he thought a certain price was fair; but what I object to, and where I say the illegal action was in this case, was in making the agreement and in fixing the prima facie case.

Mr. WHALEY. Now, Mr. Tinkham, that is a little evasive of my question.

Mr. TINKHAM. Well, I do not want to be trapped into making a statement—

Mr. WHALEY (interposing). I am not trying to trap you.

Mr. TINKHAM. I do not mean that you are trying to trap me—

Mr. WHALEY (interposing). I mean that you are trying to evade it and go over into the generalities. Now, I am trying to get you down to one point, and to get your opinion on that. You have just told Mr. Sumners that the Attorney General ought not to have agreed to a price of 17 or 18 cents, because it was a contract—

Mr. TINKHAM (interposing). A contract; yes.

Mr. WHALEY. Now, I am asking you if, after investigating the facts, he arrives at the conclusion that 17 and 18 cents are fair prices, whether in your opinion he ought to have said that, or ought to have left the matter wide open and let them charge whatever they wanted to—sell it for any price that they wanted—I am asking you if you think the latter course was the proper one to pursue instead of the former one?

Mr. TINKHAM. I think that, if he had stated that he thought—just as he did in the coal case—that a certain addition to prices was sufficient, and that he would take notice, or his office would take notice, of any other additions to prices, it would have been a perfectly correct policy to follow. It would have been unusual; but these are unusual times. But I think he would have been acting within his power and within his discretion, if he wanted to do that. But when he makes a contract and sets up a prima facie case, as he did in this Louisiana sugar matter, then he is doing something which is illegal, and something which as a matter of public policy is absolutely unsound, in my opinion.

Mr. WHALEY. Well, did they not enter into a contract in the coal case?

Mr. TINKHAM. Which coal case?

Mr. WHALEY. The coal case where he brought the injunction?

Mr. TINKHAM. Well, when the Attorney General brings a case and has it in court, then he has jurisdiction over it; then he may make such arrangement with the defendant, of course, as he wishes, or as the court will approve. But as I understand, in the Louisiana case, he had no one before him in a legal way and made no agreement with anybody over whom he had jurisdiction; he entered into an agreement with a voluntary association, against whom no proceedings had been taken.

Mr. WHALEY. It was not an incorporated association?

Mr. TINKHAM. I do not know whether it was an incorporated association or not.

Mr. WHALEY. That is it. You made a statement and you do not know about it. I am asking you about what you know. Now, did he not enter into a contract with the producers' association there?

Mr. TINKHAM. That is what his telegram said. And I am asking you to investigate the facts.

Mr. WHALEY. Well, if that was a good association, and could bind the producers, do you think that was a fair or an unfair way of handling it?

Mr. TINKHAM. I think it was illegal.

Mr. WHALEY. Well, he did it with the coal miners, did he not?

Mr. TINKHAM. Well, he had jurisdiction of the coal miners, having brought them into court.

If he had proceeded against this association and had them in court, and then made this agreement with them, there might be a different aspect of the case presented.

Mr. WHALEY. Then you think he was justified in bringing the injunction proceedings against the coal miners?

Mr. TINKHAM. He had the legal right to do it.

Mr. WHALEY. Well, do you think he was right in doing it?

Mr. TINKHAM. Well, I do not know about those facts. I can not pass an opinion on things about which I do not know the merits.

Mr. WHALEY. Well, you said that he brought the coal miners into court in injunction proceedings; do you think he was right in doing so?

Mr. TINKHAM. Whether he was right in doing that I do not know.

If a prosecuting attorney has jurisdiction, over a man, having started a prosecution against him, then he can make an agreement with him, which he could never make with anyone against whom he had not instituted proceedings. In other words, it is a question of jurisdiction; he had no jurisdiction in the sugar case in that way.

Mr. WHALEY. Well, as I gather from your rather scattering remarks, your idea is that the prosecuting attorney ought to bring a case against a man, whether he believes he has the facts to prove his case or not?

Mr. TINKHAM. Not at all; that is entirely unfair to say that. I have said a number of times before the committee that I believe he should examine into the facts, and then if he wants jurisdiction over a man, he should start a prosecution, and then make an agreement, if he wants to do that, as he did in the coal miner's case, provided he is justified on the facts. But for the Attorney General, without starting a prosecution, to sit in his office and say, "I will make a prima facie case in relation to what you are dealing with, and if you do not assent to it—or I will compel you to assent to that;

and if you do not, I will take you into court"—is an entirely different matter. Its character is entirely different.

And that is what he did, as I understand it, in this case; but I am asking you to investigate it. If I am wrong then the case is not proved; but so far as I can see from those telegrams, there is no question but what, without having these men in court, he made an agreement with them, or coerced them into an agreement, if you want to put it that way, and set up a prima facie case which was entirely illegal.

Mr. HUSTED. Under the Lever Act, if the Attorney General believed that profiteering was going on in Louisiana, it was his clear duty to prosecute, was it not?

Mr. TINKHAM. Yes.

Mr. HUSTED. And if he believed that the men who were selling there were not selling at unfair prices, it was his duty not to prosecute, was it not?

Mr. TINKHAM. It was.

Mr. HUSTED. Now, what other authority did he have under the Lever Act?

Mr. TINKHAM. None whatsoever, I believe.

Mr. HUSTED. This arrangement which he made with the producers was to cover the entire crop, was it not?

Mr. TINKHAM. It was.

Mr. HUSTED. And conferred immunity upon all producers in Louisiana who did not sell above the price fixed in the agreement?

Mr. TINKHAM. It would seem to me so, although I have not, of course, read the agreement.

Mr. HUSTED. Now, assuming that 17 and 18 cents was a fair price on the day the agreement was entered into, how could the Attorney General or anybody else tell that that would be a fair price a month hence?

Mr. TINKHAM. I do not see how they could—or how he could.

Mr. HUSTED. Do you believe that the arrangement that the Attorney General made with the producers was of any legal force and effect whatever, or do you think that it was simply a declaration of the intention of the Attorney General not to prosecute, provided the terms of the agreement were kept by the producers?

Mr. TINKHAM. According to my theory of it, the agreement, of course, was of no force and effect, but it did give—

Mr. HUSTED (interposing). On the other hand, was it not wholly a one-sided agreement? The producers would be afraid to sell for fear of prosecution, whether the price was fair or was not fair; on the other hand, the Attorney General was not precluded from bringing a prosecution at any time, whatever the price might be, except as he considered himself bound by a moral obligation?

Mr. TINKHAM. That is absolutely my opinion of the situation and the agreement, although I have not read it—

Mr. BOES. It was possible, was it not, and quite probable that some of the sugar men in Louisiana selling at 17 cents would have been profiteers and some of them would not; that is, you could not guess that they would be all on the same basis? Now, by fixing a price, did not the Attorney General in effect say, "I will let some profiteers go and I will hold a club over another class of men"?

Mr. TINKHAM. You may put it in that way and be correct.

Mr. BOIES. Now, the gentleman from South Carolina asked you how you would go and prove that the man was a profiteer. If a man is in business and buys goods, you do not have to put him upon the witness stand, do you, to prove what he pays for his goods? You can go to the wholesaler or the man with whom he does business and find out what he pays?

Mr. TINKHAM. You can if you can find him.

Mr. BOIES. And then you can ascertain from the purchaser what he pays and determine from those facts whether he is profiteering or not?

Mr. TINKHAM. Exactly; first as a matter of personal judgment and then as a matter of submission of the facts to the jury you can determine in that particular case whether profiteering exists.

Mr. BOIES. Now, a man in business has a right to fix such a price on his goods as in his judgment is not profiteering, has he not?

Mr. TINKHAM. Yes; ordinarily.

Mr. BOIES. Then has the Attorney General a right, in advance of the institution of a criminal prosecution, to hold a club over that man's judgment?

Mr. TINKHAM. Not by an agreement in writing with a *prima facie* clause, it would seem to me.

Mr. SUMNERS. I just want to ask one question: I believe you stated a few moments ago that there is, of course, a difference in the cost of production by various manufacturers?

Mr. TINKHAM. Yes.

Mr. SUMNERS. And I presume, a difference in the cost of distribution by various distributors?

Mr. TINKHAM. Yes.

Mr. SUMNERS. Now, in the practical operations, all the regulatory legislation, whether by direct act of the legislature, or by rules promulgated by boards of control they have been compelled to deal with these various matters of profits on the basis of general average, have they not?

Mr. TINKHAM. I would like to answer your question in this way—I thought I had the President's proclamation, in relation to fair prices; but I can not put my hand on it now.

Mr. SUMNERS. I believe it is a fact—I do not know any exception to the rule—that the profits allowed for sugar distribution, and various sorts of profits, have been practically uniform to all distributors; and the profits allowed to manufacturers or refiners of sugar have been practically uniform under the same conditions?

Mr. TINKHAM. I understand the principle during the war, under the proclamation of the President under section 5 of the Lever Act was that the fair average prewar profit was to be allowed.

Mr. SUMNERS. In other words, we have to deal with these matters in the practical exercise of this extraordinary power upon some basis of average; it would be interminable, it would be impossible, to take each individual, almost, would it not and go into the details concerning his own profits and the economy with which he conducted his business?

Mr. TINKHAM. It would be somewhat difficult. Let me read the President's proclamation——

Mr. SUMNERS (interposing). I wanted to ask you one question; but you may read that first.

Mr. TINKHAM. I wanted to read the President's proclamation of what fair profits were. It was dated November 27, 1917, and is as follows:

EXECUTIVE ORDER No. 2765.

I hereby authorize and direct the United States Food Administrator, in prescribing regulations for licenses under section 5 of the act of Congress approved August 10, 1917, entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," and in enforcing and carrying into effect, so far as it relates to foods, feeds, and their derivative products, that part of section 5 which reads as follows: "Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory, and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence"; to find that a just, reasonable, and fair profit is the normal average profit which persons engaged in the same business and place obtained prior to July 1, 1914, under free competitive conditions; to indicate, if he shall see fit to do so, what margin over cost will return such a just, reasonable, and fair profit, and to take such legal steps as are authorized by said act to prohibit the taking of any greater profit.

WOODROW WILSON.

The WHITE HOUSE, November 27, 1917.

Mr. BOIES. Do you think that would apply in a criminal prosecution for profiteering?

Mr. TINKHAM. I do not know; I would not want to pass on that question.

Mr. WHALEY. It would be very persuasive to the jury to-day, would it not?

Mr. TINKHAM. I do not know whether it would to-day, but it would have been during the war.

Mr. BOIES. It would if it ever got to them as a matter of evidence.

Mr. SUMNERS. Mr. Tinkham, in so far as there ever was—if there ever was—an administrative policy or philosophy in dealing with these things on the basis of the average conditions, whether you believe it right or wrong, the Attorney General did undertake to apply that to the Louisiana sugar situation, did he not?

Mr. TINKHAM. Well, I do not know whether he did or not; but we are challenging his right to make an agreement and set up a prima facie case.

Mr. SUMNERS. Yes, I know; but waiving the question of right or authority?

Mr. TINKHAM. Well, if you waive that you waive the case—

Mr. SUMNERS (interposing). Yes, I understand; but would you mind answering this question?

Mr. TINKHAM. I will if I can.

Mr. SUMNERS. If there was any common sense or administrative philosophy in the policy under which we undertook to do these things on the basis of averaging conditions, the Attorney General, whether he had the authority or not, sought to apply that to the Louisiana situation, did he not?

Mr. TINKHAM. I suppose he did.

Mr. WHALEY. I want to ask a question: You said yesterday that you were thoroughly saturated with the sugar question, and you could almost qualify as an expert?

Mr. TINKHAM. Well, if I said so yesterday, I think probably it was in a little fit of enthusiasm, because I should prefer now to dilute that statement a little.

Mr. WHALEY. Well, as we were sitting here as a sort of quasi court yesterday, it was not out of place; but we will let that pass. At present, I want to ask you this question: The Sugar Equalization Board fixed a general price for all refineries in 1918 for refining sugar did it not?

Mr. TINKHAM. Yes.

Mr. WHALEY. Irrespective of what the overhead charges of each separate refinery were?

Mr. TINKHAM. That is true, as I understand it.

Mr. WHALEY. Therefore they did not take into consideration what the cost of refining was, but they fixed a flat fee.

Mr. TINKHAM. That is, a fixed profit?

Mr. WHALEY. No; they paid them so much for refining, per ton.

Mr. TINKHAM. I thought they allowed the refiners a certain fixed amount.

Mr. WHALEY. Per ton?

Mr. TINKHAM. For refining; yes—

Mr. WHALEY (interposing). Per ton?

Mr. TINKHAM. Per ton, perhaps; I do not know the details.

Mr. WHALEY. A fixed amount per ton, irrespective of the overhead charges.

Mr. TINKHAM. Well, perhaps they did; I do not know the exact details.

Mr. WHALEY. In other words, they fixed a general average and made each one comply with that general average?

Mr. TINKHAM. That is my best judgment.

Mr. WHALEY. That was as to the sugar refineries?

Mr. TINKHAM. Yes.

Mr. WHALEY. Now, could not the Attorney General in this case fix a general average?

Mr. TINKHAM. But the cases are utterly dissimilar.

Mr. WHALEY. Well, one refinery may have lost and another may have made a big profit under that arrangement.

Mr. TINKHAM. The amount allowed was a very small profit, as I understand it—less than in ordinary times, or in ordinarily good times. I understand that sugar refining—that is, the cost of management and the number of people employed and the machinery are quite similar in the different refineries; they are very much more similar than the situation in a large State, of various farmers, with a few or many acres, and with varying weather conditions to contend with.

Mr. BOIES. And is there any authority of law for any man, or board constituted under this Government, to make rules and orders directly overthrowing the plain language of a criminal statute?

Mr. TINKHAM. I know there is not. And that is exactly what is being challenged here before your committee.

Mr. BOIES. So that if a man were, in fact, guilty of profiteering under the criminal provisions of the law, any general average fixed

by any man or board would not be a material consideration in a criminal prosecution, would it?

Mr. TINKHAM. I should not think so; yet you never can tell what different district judges will do, and how much—

Mr. BOIES (interposing). And it is the duty of the prosecuting attorney to proceed with a criminal prosecution where he believes that a criminal statute has been violated, is it not?

Mr. TINKHAM. Absolutely.

Mr. BOIES. That is all.

Mr. HUSTED. Now, Mr. Tinkham, will you take your third interrogatory?

Mr. TINKHAM. The third interrogatory is as follows:

(3) Whether it has been usual for the office of the Attorney General, in advance of legal action, to render an official opinion in relation to the United States criminal statutes and notify possible violators of his interpretation of them, and whether he notified Louisiana sugar producers that, under laws against profiteering, they would not be prosecuted if they sold yellow clarified at 17 cents per pound and plantation granulated at 18 cents per pound.

The answer of the Attorney General to that interrogatory is as follows:

3. As to the first request in paragraph 3, I beg to state that it has not been usual for the office of the Attorney General in advance of legal action to render an official opinion in relation to the United States criminal statutes and notify possible violators of his interpretation of them, nor has it ever been done to my knowledge.

In answer to the second request in paragraph 3, I never notified the Louisiana sugar producers that under laws against profiteering they would not be prosecuted if they sold yellow clarified at 17 cents per pound and plantation granulated at 18 cents per pound.

The question involved here is one that has been discussed two or three times in the House of Representatives and each time the point has been raised the Attorney General had the right to express his opinion, to give his advice and opinion to the Louisiana sugar growers' and it was stated by several of the Members of the House that, as district attorneys they had given their opinions when matters had been submitted to them.

But this telegram of November 8 [indicating], is not giving an opinion; it is doing more than that; it is making an agreement.

But, as the interrogatory was sent to the Attorney General and answered, I desire to offer evidence that the Department of Justice, the Attorney General, has no right to give any advice or opinion to others than heads of departments and his own agents.

On November 15, 1919, I received the following letter from the Department of Justice:

NOVEMBER 15, 1919.

HON. GEORGE HOLDEN TINKHAM,
House of Representatives.

DEAR SIR: The department has received your letter of the 13th instant, asking for advice as to whether this department is prevented by the exemption of labor unions and growers' organizations contained in the Clayton Act and appropriation laws, from taking action in the proposed movement by the American Cotton Association, a growers' organization, to retire 2,000,000 bales of cotton from the market in an effort to force a rise in prices.

I am precluded, for the reasons set forth in the inclosed statement, from giving advice except to the President and heads of the executive departments.

And then the statement which I want to have included in the record was inclosed, reading as follows:

The law prescribing the duties of the Attorney General does not permit him to give advice or official opinions to others than the President and the heads of the

several executive departments of the United States. This principle, repeatedly declared by my predecessors, was in 1878 well expressed by former Attorney General Devens, as follows:

"The authority of the Attorney General to render his official opinion is limited by the laws which create and define his office and does not permit him to give advice at the call of either House of Congress or of Congress itself, but only to the President or the head of an executive department of the Government. The absence of authority to respond to calls for legal opinions coming from sources other than those prescribed by law was early in the history of the Government suggested * * * by the then Attorney General, Mr. Wirt. * * * and no change in this respect has been made by the law creating the Department of Justice. The view thus taken has been invariably observed by my predecessors, including Attorneys General Taney, Crittenden, Bates, Evarts, and Williams." (15 Ops. A. G., 475, 476.)

The rule thus stated as a rule of law may also be regarded as a rule of necessity. So many are the requests coming to the department for advice on difficult legal questions that were all to be properly examined into and answered the efficiency of the department in the performance of its regular legal duties would be seriously affected.

I regret that for these reasons I can not comply with your request.

Now, in relation to the turn that the honorable Representative from Texas has tried to give to the action of the Attorney General, namely, that people were uncertain, and that they should have had an opinion from the Attorney General as to what was profiteering and what was not, it seems to me that, plainly, that is answered by that statement of the department to me and its inclosure.

The Department of Justice has, as I understand it, in the past, refused to give an interpretation of the antitrust laws when organizations have called upon the Department of Justice, and has given the reason that it was precluded by law and practice from giving opinions. Now, if the department was precluded by law from giving an opinion, and it gave an opinion to the Louisiana sugar growers as to what was profiteering and what was not profiteering, of course, it was illegal for the department to do so. I do not think that telegram could be tortured into a claim that it was an opinion; but the point was raised in the House and a certain twist or turn has been given in that direction by the honorable Representative from Texas. And so I offered the communication and inclosure to show that the Department of Justice has no authority to give an opinion.

Mr. WHALEY. You mean an opinion on the law?

Mr. TINKHAM. I mean an opinion on the law.

Mr. WHALEY. But it can express its opinion as to the policy of the department?

Mr. TINKHAM. Yes; as to the policy; there is no question about that.

Mr. WHALEY. Now, is this telegram an expression of opinion as to policy, or is it an expression of opinion as to the law?

Mr. TINKHAM. I do not think that it is an expression of opinion at all; it is action taken, which is unauthorized.

Mr. WHALEY. It is a communication to the district attorney down there, is it not?

Mr. TINKHAM. Yes.

Mr. WHALEY. It is not to the producers?

Mr. TINKHAM. No; but it was published.

Mr. HUSTED. And it was to be transmitted to the producers, was it not?

Mr. TINKHAM. Yes; it was to be transmitted to the producers. Now, I felt that I should offer the letter and inclosure, because that question had been involved in the debates.

I also want to state, Mr. Chairman, that it seems to me that that telegram was a notification to Louisiana sugar producers, if it was

published, and it was published, that under the laws against profiteering, they would not be prosecuted if they sold yellow clarified sugar at 17 cents per pound and plantation granulated sugar at 18 cents per pound. It seems to me that that was a notification to them; if it was public, and, therefore, that the answer of the Attorney General to that interrogatory, namely, that, "I never notified the Louisiana sugar producers that under the laws against profiteering they would not be prosecuted if they sold yellow clarified at 17 cents per pound and the plantation granulated at 18 cents per pound," is disingenuous. It seems to me that that was a notification.

Now, I want to offer the December estimate of the Agricultural Department of the crop in Louisiana; I want to offer that for the record. It shows that—

The quantity of sugar manufactured from the crop of 1919 in the State of Louisiana is estimated at 115,589 short tons. The production last year was 280,900 tons; two years ago the production was 243,600 tons; three years ago the production was 303,900 tons; four years ago, 137,500 tons; five years ago, 242,700 tons.

I also want to offer a statement of the condition of the crop in Louisiana, as shown by bulletins on the 8th day of November; the report was made on the very day that the Attorney General's telegram was sent by the Department of Agriculture, showing the very great variation in the condition of the crops; and at that time they had practically completed crops:

Condition by parishes is shown below:

Ascension.....	52	Rapides.....	62
Assumption.....	46	St. Bernard.....	62
Avoyelles.....	48	St. Charles.....	45
East Baton Rouge.....	65	St. James.....	40
Iberia.....	61	St. John.....	48
Iberville.....	75	St. Landry.....	70
Jefferson.....	40	St. Martin.....	75
Lafayette.....	74	St. Mary.....	42
LaFourche.....	41	Terrebonne.....	38
Orleans.....	62	Vermilion.....	68
Plaquemines.....	60	West Baton Rouge.....	66
Pointe Coupee.....	60	West Feliciana.....	80

I understand 100 per cent is a crop that is uninjured. So that what we have is the percentage of injury that has been received by these various crops; and you will see that the percentage runs all the way from 38 to 80; so that there was a great variety of damage.

Mr. WHALEY. What was the lowest and the highest?

Mr. TINKHAM. The highest was 80 per cent.

Mr. HUSTED. And 80 per cent would mean 20 per cent injured?

Mr. TINKHAM. Yes; that would mean that 20 per cent was injured.

Mr. WHALEY. And what was the lowest?

Mr. TINKHAM. The lowest was Terrebonne, 38, which would be 62 per cent of injury; those are the highest and the lowest—62 per cent and 20 per cent of injury, respectively.

Mr. WHALEY. Have you got the general average there?

Mr. TINKHAM. I think the general average is here. This report says:

According to John S. Dennee, field agent for the United States Bureau of Crop Estimates, in a report issued Saturday, the condition of the crop on November 1 is estimated at 51 per cent of a normal and compares with 53 one month ago, 90 one year ago, and 83, the 10-year average of condition.

(Thereupon, at 12 o'clock noon, the committee adjourned until Friday, April 9, 1920, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 9, 1920.

The subcommittee assembled at 10.30 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. We are ready to proceed, Mr. Tinkham. We have about half an hour before the House meets, and if you will hurry as much as you can, we may be able to get through with your statement to-day.

STATEMENT OF HON. GEORGE HOLDEN TINKHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS—Resumed.

Mr. TINKHAM. I want to state to the committee that if it had not been for questions which I was asked the first day and which I do not think were relevant to the issue before the committee, I think I should have been through with my case on that first day.

Mr. WHALEY. Well, Mr. Chairman, I can not allow that to go into the record without some reply, because I asked most of the questions. Now, Mr. Tinkham is a Member of Congress, and we want to extend every courtesy to him as a Member of Congress, but he is evidently the main witness in this investigation against the Attorney General, and the questions that I asked him I believe were relevant; and I think it is a question for the committee to decide whether they are relevant or not.

Mr. TINKHAM. Mr. Chairman, I am not a witness here before the committee in the sense that I am to testify. I am here to present the case. It might have been presented by an attorney hired by the committee; and I was under no obligation, in my opinion, unless it was so ruled by the chairman or by a majority of the committee to answer any questions; and I want to take issue with the honorable Representative from South Carolina upon that point.

Mr. WHALEY. I can say to the gentleman from Massachusetts that this is the first time, in the six years that I have been a member of this committee, that we have ever had anyone appear before the committee who claimed that we did not have the right to cross-examine him and find out all he knew about the subject; and I do not suppose the gentleman from Massachusetts would like to have an exception made in his case.

Mr. TINKHAM. Mr. Chairman, there surely has not been an exception made in my case. There were a great many questions asked which, it seems to me, so far as the issues in the case are concerned, were quite irrelevant; and I do not want to offend or criticize in any way the honorable Representative from South Carolina; but I think a study of the record will disclose the facts as I have stated them.

Mr. WHALEY. I will say to the gentleman that I have only asked him questions when he has made statements of fact or expressed an opinion on questions of law; in both of those instances I have questioned on the point as it was developed.

Mr. TINKHAM. Mr. Chairman, I now want to offer in evidence a statement by a Representative from Louisiana, made to the House of Representatives on December 16 last, page 708 of the Congressional

Record, which throws much light upon the issues before the committee.

Mr. Martin of Louisiana says, on page 708:

If the gentleman will give me time I will try and make it clear. The situation in Louisiana is this: Our normal crop is 300,000 tons. This year we will make less than 100,000 tons. In other words, we have about 25 per cent of a normal crop. Just at the time that this crop came upon the market there was a shortage of sugar in this country, a great scarcity, brought about by the longshoremen's strike, and when we began to harvest our crop people from all sections of the country rushed to Louisiana to buy sugar. They were willing to buy it at any price that we fixed. We had but to name the price. Many of them were offered 25 to 27 cents a pound for their sugar. This matter was brought to the attention of the Attorney General and he wrote to the United States district attorney in New Orleans that if anyone attempted to sell sugar at any such price he should be prosecuted for profiteering.

Then there is some debate, and finally, taking up his statement, Mr. Martin says, on page 709:

As I was stating when I was interrupted, this situation was brought to the attention of the Attorney General. He, in turn, instructed the United States district attorney of New Orleans that if any one attempted to sell sugar at any such price he should be prosecuted as a profiteer, or, rather, he should be called before him and made to explain why he had sold sugar at any such figure, and if the explanation was not satisfactory, he should be prosecuted. The two United States Senators from Louisiana and myself heard of this and we went down to see the Attorney General. We asked him if this report was true and he stated it was. He showed us the letter that he had addressed to the United States district attorney. We protested, first, because under the Lever Act all farm products were exempt, and we believed that sugar was a farm product. The United States Attorney General stated that he did not agree with us, that he thought that sugar was a manufactured product. I believe his rulings to be erroneous, but we further said to him that "even admitting what you say is true, that we are manufacturers and not farmers, then you can not convict any one in Louisiana for the simple reason that a man who sells his sugar for 25 cents a pound, with only 25 per cent of a crop, can not make any money, and if he makes no profit, he can not be prosecuted for profiteering." The Attorney General saw the force of this argument, but stated that in view of the fact that he was receiving so many protests from the Southern States against this price of sugar, he felt he had to take some action in order to get the price of sugar reduced in Louisiana.

Mr. SNELL. Mr. Speaker, will the gentleman yield now?

Mr. MARTIN. I have not yet gotten through with this answer. I shall be glad to yield when I am through. It was then suggested that as he had a United States district attorney in New Orleans, who lived near the sugar district, that that United States district attorney and the producers in that State should get together and make some agreement whereby there would not be any charge of profiteering in Louisiana in respect to the sale of sugar. That was done. The United States district attorney met with the sugar producers of Louisiana. The producers laid the facts before him. He had the assistance of two ex-Senators from Louisiana. The producers showed him the size of the crop and what it had cost them to produce it, and after going over all of the facts and figures they came to the conclusion that any man in the State of Louisiana who sold sugar at a price not exceeding 17 cents a pound would not be profiteering, and that a great majority of them at that price would lose money. The sugar producers of Louisiana then voluntarily agreed that they would not sell any sugar in that State at more than 17 cents a pound for clarified sugar and 18 cents a pound for refined sugar.

The district attorney stated that if they did not he was going to call them before him to show cause why they should not be held as profiteers.

Mr. Chairman, I want to offer a few figures in relation to the Louisiana crop and the Cuban crop.

I want to say to the committee, that, undoubtedly the Attorney General will state that his reason for doing what he did was to prevent the sugar in Louisiana from being sold higher than 17 and 18 cents. Of course, this in no way goes to the question of whether he had legal authority to do so, which is raised in this case, nor does it go to the question of whether he has granted immunity by

establishing and setting up a prima facie case, where otherwise profiteering might have been disclosed, and where otherwise he might have prosecuted for profiteering.

The latest estimate of the Department of Agriculture, Bureau of Crop Estimates, of the 1919-20 sugar crop is 115,585,000 short tons. For every 2-cents per pound charge for Louisiana sugar, the consumers would pay \$4,623,580, on the total crop; so that every 2-cent rise in the price of Louisiana sugar would add to the consuming public's bill for sugar about \$4,500,000.

On the other hand, here are the facts in relation to the Cuban crop: During the calendar year 1919, we consumed 2,315,097 tons of Cuban sugar, and assuming that we consumed the same amount as we did last year, every increase of two cents per pound in the cost of Cuban sugar would mean an additional \$92,603,880 that the American public would have to pay.

Therefore, let us assume, for the sake of the record, that Louisiana sugar, unless the Attorney General had taken the action he did, would have sold at 26 cents. That would have been an increase in the price he set, taking it at 18 cents, of 8 cents, or four 2-cent rises; the total amount that would be represented by those four 2-cent rises would be \$18,494,320.

Mr. WHALEY. Would you mind if I interrupted you right there?

Mr. TINKHAM. Well, I do not like to be interrupted, but at the same time I want to answer any questions that I can.

Mr. WHALEY. I want to try to get to some end of this hearing; that is the only thing. You are assuming a thing that never happened. Did Louisiana sugar ever go up to 26 cents?

Mr. TINKHAM. I am assuming that the Attorney General's only possible excuse for doing what he did was that if he had not done it, Louisiana sugar would have gone to 26 cents, and therefore that he will claim he has saved the American people the difference between 18 cents and 26 cents, so far as the Louisiana sugar crop was concerned, and on that assumption I am trying to show what the difference would have been between 18-cent Louisiana sugar and 26-cent Louisiana sugar.

Mr. WHALEY. Well, I do not find anything in the records there that shows any 26-cent sugar, except your assumption.

Mr. TINKHAM. I just read a statement in which Mr. Martin says—

Mr. WHALEY (interposing). Well, what Mr. Martin says, or what Mr. Tom, Dick, and Harry says has not anything to do with this investigation, unless he is a party in interest.

Mr. HUSTED. The witness is taking a statement of a hypothetical case before him, based upon the assumption that sugar would have gone to the highest figure that anybody stated it could have gone to if the Attorney General had not acted as he did. Now, the statement has been made that it might have gone to 26 cents, and Mr. Tinkham is trying to show that if it had gone to 26 cents it would have represented a cost of a certain amount of money to the consuming public, which he estimates at—how many million dollars, Mr. Tinkham?

Mr. TINKHAM. \$18,500,000, roughly.

Mr. HUSTED. \$18,500,000?

Mr. TINKHAM. Mr. Martin said, in the statement that I have just read:

We had but to name the price. Many of them were offered 25 to 27 cents a pound for their sugar.

Now, I am assuming that the only thing that the Attorney General can claim in defense of his illegal action is that he prevented Louisiana sugar from going from 18 cents to 26 cents; and on that assumption——

Mr. HUSTED (interposing). Well, he practically states that in his answer to your interrogatories?

Mr. TINKHAM. Certainly.

Mr. CLASON. Just let me suggest that, in answer to one of the interrogatories, speaking about what the district attorney had before him, the Attorney General states that he had before him the fact that Louisiana sugar was selling in the open market at from 20 to 27 cents a pound.

Mr. TINKHAM. Yes. Now, I have quoted in relation to the Cuban crop the number of tons last year consumed in America; and I have shown that a 2-cent increase in the price on the Cuban crop would amount to \$92,603,880.

Therefore—and I am pursuing a line of argument which is based on assumptions—therefore, if the action of the Attorney General prevented the Louisiana crop from going above 18 cents and from going to 26 cents, theoretically he would save the American consumer \$18,500,000, roughly.

On the other hand, if his action of setting an official American price put up the Cuban market even 2 cents, then the American public would pay \$92,603,880, which otherwise it would not have had to pay.

Now, the difference between the \$92,603,880 and the \$18,500,000, roughly, would be \$74,097,560, which would be a net loss on that assumption and on that theory to the American people.

But it would be greater than that, Mr. Chairman, for this reason, that the price of Cuban sugar sets the price of the American market, and as the American market is served by only about half—that is, half of the amount of sugar consumed comes from Cuba, it would be twice that—twice \$74,097,560, or \$148,192,120, which the American public would have had to pay for a 2 cent increase in the Cuban price.

Mr. HUSTED. Is there any evidence, Mr. Tinkham, that the fixing of those prices for Louisiana sugar stimulated the Cuban market so that an additional price was placed upon sugar to be sold in the United States?

Mr. TINKHAM. There is a very direct statement and charge made by Mr. George A. Zabriskie, of New York, who was chairman of the Sugar Equalization Board, and technically chairman of it to-day. I will read that statement.

That statement appeared in a newspaper article——

Mr. WHALEY (interposing). Mr. Tinkham, can we not get at this thing in a better way than by reading newspaper articles?

Mr. HUSTED. Well, we will only accept it for what it is worth as a newspaper article anyway, and we can let Mr. Tinkham read it for what it is worth.

Mr. WHALEY. Perhaps Mr. Tinkham knows what was the price of Cuban sugar in Cuba at that time. Do you know that, Mr. Tinkham?

Mr. TINKHAM. It was about 6½ cents.

Mr. WHALEY. Now, what was the price in the United States?

Mr. TINKHAM. At retail?

Mr. WHALEY. Well, on the same basis as the Louisiana sugar.

Mr. TINKHAM. Well, the only sugar, as I understand it—

Mr. HUSTED (interposing). At what price, if you happen to know, was Cuban sugar sold in the United States by the Cuban producers, after the price for Louisiana sugar was fixed, as charged, by the Attorney General?

Mr. TINKHAM. I have a table in relation to that. The telegram of the Attorney General was dated November 8, 1919, and the first official quotation that I have is December 4, and at that time Cuban sugar sold at 11 cents a pound; that is, Cuban raw.

Mr. HUSTED. On the American market?

Mr. TINKHAM. In Cuba, for the American market, as I understand it, f. o. b. or, rather, that was the cost and freight price; the f. o. b. price was 10.62.

Mr. HUSTED. On what date was it sold at that price?

Mr. TINKHAM. On the 4th of December; that is the first official trade quotation, which I have.

Mr. HUSTED. That was on the 4th of December, 1919?

Mr. TINKHAM. Yes; that was less than 30 days after the telegram of the Attorney General fixing the price of Louisiana sugar.

Mr. HUSTED. Now, at what price was it sold in the American market, at the nearest date that you know of, prior to the time that the Attorney General is charged with fixing the price of Louisiana sugar?

Mr. TINKHAM. Mr. Zabriskie testified before the Agricultural Committee of the Senate that, in September—

Mr. HUSTED. September, 1919?

Mr. TINKHAM. Yes, 1919; he could have purchased, he believed, the entire Cuban crop for 6½ cents, which was 1 cent increase over what he had purchased it at in 1918.

Mr. HUSTED. In other words, in three months' time, and after this price had been fixed by the Attorney General, the price of Cuban sugar on the American market had practically advanced about 4½ cents per pound?

Mr. TINKHAM. It went from 6.5 to 10.62 cents; that is cost, f. o. b. Cuba.

Mr. HUSTED. From 6.5 cents to 10.5 cents in less than—

Mr. TINKHAM. From 6.5 cents to 10.5 cents; I think the 6.5 cents was the cost f. o. b. Cuba, rather than the cost and freight price; but I am not sure. But the 10.62 is the cost f. o. b. Cuba.

Mr. WHALEY. What did it sell for in the United States?

Mr. TINKHAM. At retail?

Mr. WHALEY. In the open market?

Mr. TINKHAM. Of course, I am talking about raw sugar.

Mr. WHALEY. Yes.

Mr. TINKHAM. And I am quoting the price. But at that time it was selling at 10 or 11 cents at retail.

Mr. WHALEY. In the United States?

Mr. TINKHAM. In the United States.

Mr. WHALEY. Well, that was cheaper than it was in Cuba?

Mr. TINKHAM. It was 6.5 cents in Cuba. But the difference is that one price is the raw sugar in Cuba, and the other in the United States is refined sugar at retail.

Mr. WHALEY. You would have to add freight.

Mr. HUSTED. Let us see if Mr. Tinkham understands the question. You state that in December, 1919, raw sugar sold in Cuba for the American market at—?

Mr. TINKHAM. 10.62 cents.

Mr. HUSTED. At 10.5 cents, practically.

Mr. TINKHAM. Yes; practically 10.5 cents.

Mr. HUSTED. 10.5 cents. Now, do you know at what price at that time raw sugar sold on the American market?

Mr. TINKHAM. The only raw sugar, I assume—you do not mean Cuban sugar in the American market, do you?

Mr. HUSTED. Cuban sugar.

Mr. TINKHAM. Well, that was the price at which raw sugar in Cuba could be bought for the American market; to be brought here and refined.

Mr. HUSTED. Now, at what price was refined Cuban sugar sold for on the American market at that time; that is, in December, 1919?

Mr. TINKHAM. In December, 1919, it was sold for between 10 and 11 cents, because the prices controlled by the Equalization Board were then applying.

Mr. WHALEY. In December, 1919?

Mr. TINKHAM. Yes.

Mr. HUSTED. The Equalization Board at that time controlled the prices?

Mr. TINKHAM. The Equalization Board controlled the prices practically up to December 31, 1919.

Mr. HUSTED. And do you mean to say that refined Cuban sugar sold in December for less than the raw sugar sold for the American market in Cuba?

Mr. TINKHAM. That is absolutely true.

Mr. HUSTED. Well, was it sugar of the same crop?

Mr. TINKHAM. No; not of the same crop, an entirely different crop.

Mr. HUSTED. An entirely different crop?

Mr. TINKHAM. Yes.

Mr. HUSTED. And then you mean that the refined sugar sold in America on the market was of a previous crop?

Mr. TINKHAM. Bought by the United States, at 5.5 cents.

Mr. HUSTED. Bought by the United States at 5.5 cents and sold in the open market at 10.62 cents—or sold in the American market at about 12 cents?

Mr. TINKHAM. At 10 and 11 cents retail.

Mr. HUSTED. At 10 and 11 cents retail. Well, now, can you tell the committee at what price the sugar which was sold in Cuba for the American market at 10.62 cents, after being refined, was sold on the American market?

Mr. TINKHAM. I can not. But to get at that price, you would have to add, of course, the freight, and you would have to add—

Mr. HUSTED (interposing). The cost of refining?

Mr. TINKHAM. The cost of refining; and you would have to add the cost of transportation, and then the wholesalers' profit, and then the retailer's profit.

Mr. WHALEY. And insurance?

Mr. TINKHAM. And insurance.

Mr. WHALEY. And the importation duties also?

Mr. TINKHAM. Exactly; there is some little duty. I should say that that sugar was selling, under ordinary nonprofiteering conditions, at about 16 or 17 cents.

Mr. WHALEY. As a matter of fact, it sold around 13 cents, did it not?

Mr. TINKHAM. I do not think so. I do not think that raw sugar in Cuba could be bought for 10.5 cents and sold at any profit, retail, in America for 13 cents.

Mr. WHALEY. As a matter of fact, in January, did not Cuban sugar sell in the American market at the highest price of 13.04 cents?

Mr. TINKHAM. Well, it depends on what you mean. Are you talking of retail prices?

Mr. WHALEY. I mean to the consumer?

Mr. TINKHAM. It may have, in certain places; there has been a very great variation in prices.

Mr. WHALEY. Well, suppose you take New York for a basis.

Mr. TINKHAM. I can not answer the question; I do not know.

Mr. WHALEY. Well, have they not got a sugar market in New York.

Mr. TINKHAM. They have. It is one of the principal sugar markets in the United States.

Mr. WHALEY. Do you know what it was sold for in February?

Mr. HUSTED. I know the consumers were paying about 22 cents a pound for it at that time in New York.

Mr. TINKHAM. I shall furnish at this time a table which I have here giving various prices, by months and years, from 1913, and at various dates and months from December 4, 1919, to April 1, 1920.

The statement referred to is as follows:

Average price of 96° Cuban centrifugal sugar in Habana by months, 1913-1919.

[From annual reports of the Cuban secretary of the treasury "Industria Azucarera y sus Derivadas."]

Month.	1919 ¹	1918 ²	1917	1916	1915	1914	1913
	<i>Cents per pound.</i>	<i>Cents per pound.</i>	<i>Cents per pound.</i>	<i>Cents per pound.</i>	<i>Cents per pound.</i>	<i>Cents per pound.</i>	<i>Cents per pound.</i>
January.....	5.50	4.60	3.59	3.10	2.51	1.65	1.92
February.....	5.50	4.60	3.50	3.41	2.96	1.71	1.87
March.....	5.50	4.60	3.90	4.07	3.40	1.62	1.96
April.....	5.50	4.60	4.54	4.50	3.18	1.60	1.82
May.....	5.50	4.60	4.50	4.86	3.53	1.85	1.74
June.....	5.50	4.60	4.46	4.80	3.64	1.97	1.76
July.....	5.50	4.60	5.01	4.93	3.54	1.93	1.72
August.....	5.50	4.60	5.90	4.95	3.37	3.66	2.23
September.....	5.50	4.60	5.56	4.69	2.93	3.94	2.11
October.....	5.50	4.60	5.57	4.74	2.82	2.82	1.94
November.....	5.50	4.60	5.42	5.06	3.37	2.48	2.03
December.....	³ 5.50	4.60	4.60	3.93	3.30	2.47	1.83
Yearly average.....	5.50	4.60	4.72	4.24	3.21	2.31	2.17

¹ Oct. 24, 1918, United States Sugar Equalization Board entered into a contract to purchase entire Cuban crop at 5.50 cents per pound f. o. b. northern ports and 5.45 cents per pound f. o. b. southern ports.

² Dec. 24, 1917, the International Sugar Committee of the Food Administration entered into a contract with the Cuban producers to purchase up to 2,500,000 long tons of Cuban sugar at 4.60 cents per pound f. o. b. northern ports or 4.55 cents per pound f. o. b. southern ports.

³ Old crop price. For the new crop Cuba (1919-20) which began coming onto the market in December, 1919, the following prices are taken from Willett & Gray's Weekly Statistical Sugar Trade Journal. From the cost and freight prices quoted in Willett & Gray 0.385 cent per pound has been deducted for freight to New York to arrive at the f. o. b. Cuba prices.

INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR. 81

New crop—Willett & Gray's weekly quotations, Cuban, 96° centrifugal, cost und freight to New York (prompt delivery).

Date.	Cost and freight.	Cost f. o. b. Cuba. ¹	Date.	Cost and freight.	Cost f. o. b. Cuba. ¹
	Cents per pound.	Cents per pound.		Cents per pound.	Cents per pound.
1919.			1920.		
Dec. 4.....	11.00	10.62	Jan. 29.....	12.00	11.62
Dec. 11.....	12.00	11.62	Feb. 5.....	12.00	11.62
Dec. 18.....	12.25	11.87	Feb. 11.....	11.00	10.62
Dec. 24.....	12.00	11.62	Feb. 19.....	9.25	8.87
Dec. 31.....	11.75	11.37	Feb. 26.....	9.125	8.74
			Mar. 4.....	10.50	10.12
1920.			Mar. 11.....	10.00	9.62
Jan. 8.....	12.00	11.62	Mar. 18.....	11.00	10.62
Jan. 15.....	12.00	11.62	Mar. 25.....	11.75	11.37
Jan. 22.....	12.00	11.62	Apr. 1.....	13.00	12.62

¹ New crop quotation.

Mr. WHALEY. Before we get away from that, what is the amount of beet sugar which is produced in this country?

Mr. TINKHAM. Well, somewhere around 700,000 tons this year. That is somewhat in excess—about 100,000 tons, roughly, in excess—of the last year's crop of sugar.

Mr. WHALEY. Does beet sugar go into competition with the Cuban sugar?

Mr. TINKHAM. Well, theoretically it did. Of course, up to the 31st of December, 1919, the Equalization Board had zones, and certain sugar could only be sold in certain zones.

Mr. WHALEY. Where were those zones?

Mr. TINKHAM. One was a western zone; and, as I understand it, beet sugar had to be sold in that western zone; and then there was a southern zone and an eastern seaboard zone.

Mr. WHALEY. Where did Louisiana sugar sell?

Mr. TINKHAM. I think that sold mostly in the southern zone and in the eastern seaboard zone. I am not sure, however.

Mr. WHALEY. Where did the Cuban sugar sell? In what zone did that sell?

Mr. TINKHAM. That was sold, I know, on the Atlantic seaboard—all the Atlantic seaboard States; that is, I believe it was. Now, I do not know the details of the zone system, but I know they had a zone system in effect, by which most of the beet sugar was prevented from coming into the eastern or the southern market, as I understand it.

Mr. HUSTED. You stated, Mr. Tinkham, that the price of Cuban sugar fixed the price for the American market. Is that a well-established fact?

Mr. TINKHAM. I so understand.

Mr. HUSTED. Is there any evidence that during the period that Louisiana sugar was sold in the southern zone that you referred to, at the price which was fixed by the Attorney General, namely, 17 and 18 cents, Cuban sugar came into the southern market and was sold in that southern market in competition with Louisiana sugar at the same price at which Louisiana sugar was sold?

Mr. TINKHAM. I am informed that there has accumulated considerable evidence that after the Attorney General fixed the price at 17

and 18 cents for Louisiana sugar, sugar was bought—I do not know whether by American or by Cuban interests—that sugar was bought in Cuba at 6.5 or 7 cents raw, taken to Louisiana, refined in Louisiana, and sold as Louisiana sugar, there being no way, from a chemical standpoint, of distinguishing the Louisiana sugar from the Cuban sugar, after once it had been refined and separated.

Mr. WHALEY. That was a fraud on the public, was it not?

Mr. TINKHAM. Of course, it was a fraud on the public. I believe that that followed as one of the natural consequences of the Attorney General's illegal action in the Louisiana case.

Mr. HUSTED. Now, Mr. Tinkham, will you tell us the sources of your information about that matter?

Mr. TINKHAM. Well, that was somewhat confidential information. The evidence is in the hands of the chairman of the Committee on Agriculture of the Senate, and there will be an investigation by the Committee on Agriculture of the Senate on this phase of the sugar question. I do not think it comes within our resolution.

Mr. HUSTED. Well, the hour of the convening of the House has arrived, and the subcommittee has agreed to take an adjournment at this time.

Mr. TINKHAM. I would like to finish to-day, if I can; it will not take me very long.

Mr. SUMNERS. I would like very much, before you go further, to ask you one or two questions about those estimates of profit and loss—at your own time, whenever it would be most convenient to you.

Mr. HUSTED. Well, the House meets at 11 o'clock to-day.

Mr. TINKHAM. I would like to get through. It seemed to me, when I first came before the committee, that I could finish my case in an hour and a half. And I could have concluded in that time; there is no reason why I should not have done so except that I have had to answer a number of questions.

Mr. WHALEY. Mr. Tinkham, you object to the questions which have been asked you. But that is always the case in an investigation; questions are always asked of a witness by members of the committee.

Mr. TINKHAM. But I am not a witness; I am simply presenting a *prima facie* case. I am not an expert on sugar. I have studied it only as we all study questions—

Mr. WHALEY (interposing). Well, your resolution is an indictment. If you do not mean to present to the committee any facts—if you are not a witness—we can take the matter up for ourselves.

Mr. TINKHAM. I will be very glad if you will take it up for yourselves.

Mr. WHALEY. Now, you have presented to us what you claim are facts; and we would like to look into those facts and see what they are. For instance, you have given us figures as to the crops. I would like to know what the beet-sugar crop was; I would like to know what the price of beet-sugar was; what was the lowest and the highest price; and how it came into competition with the Cuban crop and the Louisiana crop. I want to know something about the zones that you have mentioned. I knew nothing about zones until you brought that matter up. Now, I want to know something about them.

Mr. HUSTED. Well, Mr. Tinkham, if you can not answer a question, you can simply say that you do not know the answer.

Mr. TINKHAM. I appreciate that, Mr. Chairman, of course.

Mr. HUSTED. There is not any way that I know of that you can limit Members of Congress, or members of a committee of Congress, from asking questions; but if you have not the information to answer those questions you can say so.

Mr. TINKHAM. Well, must they not be reasonably relevant to the issues before the committee?

Mr. HUSTED. Well, that is for you to say. You can say that you can not answer them; that you do not know. But we are not governed by strict rules of evidence.

Mr. TINKHAM. Of course, I understand that; and I think my answers disclose the fact that I am willing to contribute what I know to the investigation.

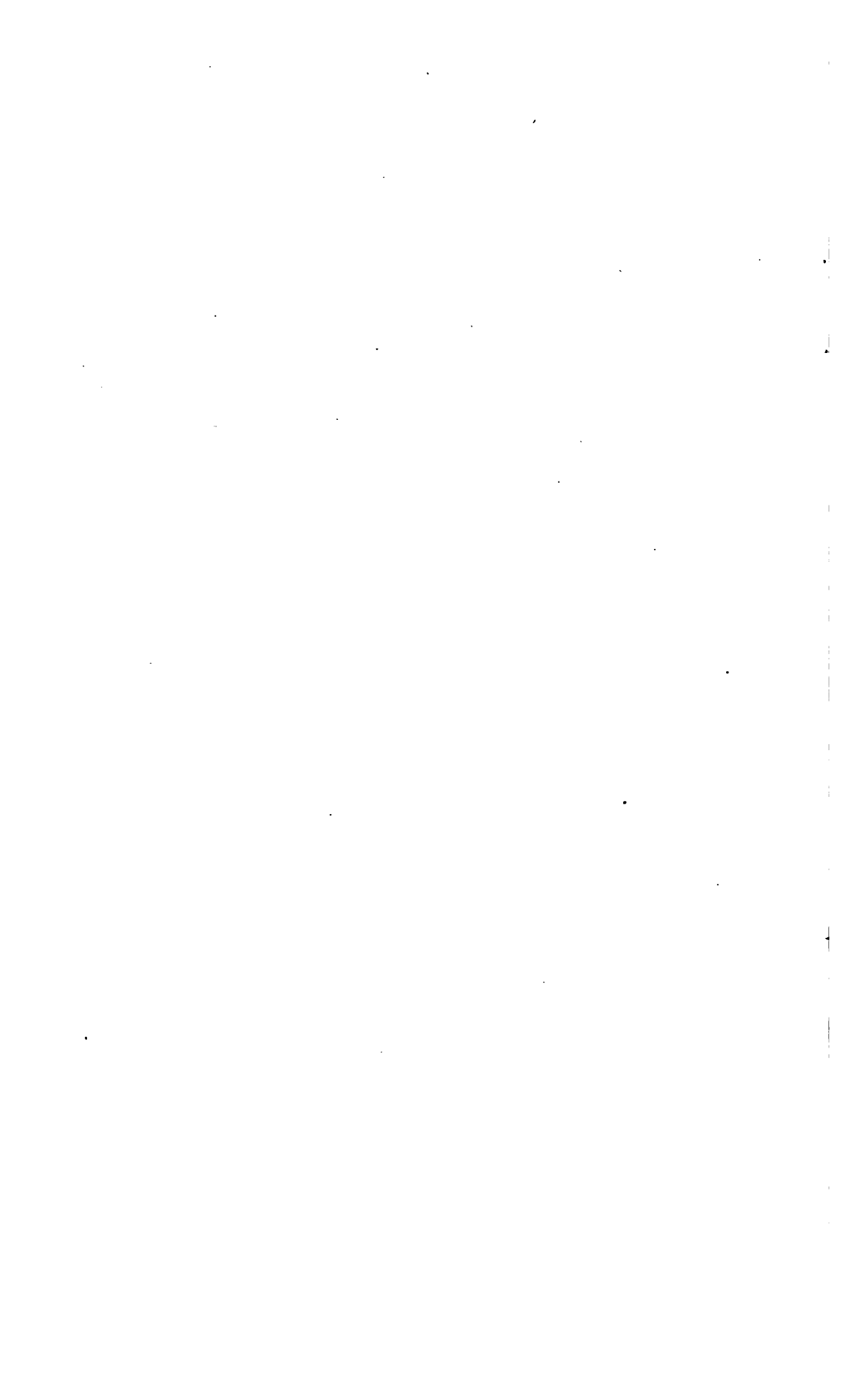
Mr. HUSTED. I think you have been extremely frank and extremely courteous to the committee. All I want to say is this: That, when questions are addressed to you as to matters of fact, or as to matters of opinion, of course, if you do not consider them relevant, you can say so; and if you have not the information, you can simply say that you have not the information, and then we will try to get some other witness who has it.

Mr. WHALEY. I think the witness has a perfect right to say that he can not answer the questions, because if he has not the information he can not answer the questions; but when it comes to passing upon the relevancy or irrelevancy of questions, I think that is not a matter for him to determine, but is a matter that is up to the committee.

Mr. HUSTED. That is true, but he can say that, as the matter was not relevant, he has not examined into it and does not know how to answer it.

Mr. WHALEY. That would be perfectly proper.

(Thereupon, at 11.10 o'clock a. m., the subcommittee adjourned until Tuesday, April 13, 1920, at 10.30 o'clock a. m.)



COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

ANDREW J. VOLSTEAD, *Minnesota, Chairman.*

DICK T. MORGAN, Oklahoma.	RICHARD YATES, Illinois.
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W. D. BOIES, Iowa.	HENRY J. STEELE, Pennsylvania.
CHARLES A. CHRISTOPHERSON, South Dakota.	HATTON W. SUMNERS, Texas.
	W. C. PREUS, <i>Clerk.</i>

SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY.

JAMES W. HUSTED, *Chairman.*

DAVID G. CLASSON.	RICHARD S. WHALEY.
W. D. BOIES.	HATTON W. SUMNERS.

INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL
RELATING TO THE PRICE OF LOUISIANA SUGAR.

SERIAL No. 21, PART 2.

SUBCOMMITTEE OF COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES,

Washington, D. C., April 13, 1920.

The subcommittee assembled at 10.30 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. Now, Mr. Tinkham, will you continue with your statement?

STATEMENT OF HON. GEORGE HOLDEN TINKHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. TINKHAM. Mr. Chairman, when we closed the last hearing, April 9, questions had been asked and data had been offered in relation to the price of Cuban sugar; and I have had prepared a map which shows the rise from the 1st of January, 1913, to the 1st of April, 1920, which I would like to offer to the committee.

The committee will see by this map that in 1913, in January, the price was a little less than 2 cents; then, that it rose to 4 cents, in September, 1914, shortly after the war was declared. Then, it declined, and it gradually rose through 1916, and still further, through 1917.

The committee will find a flat price of 4.5 cents, as fixed by contract of the International Sugar Committee in 1918 and an increase of 1 cent, to 5.5 cents, the price fixed by contract with the United States Sugar Equalization Board in 1919, and then they will find, in December, when the control over the 1919 crop by the equalization board was about to expire, a perpendicular rise from 5.5 cents to 11.5 cents; and they will see a decline through February, and then an increase through March, and a very great increase, beginning about the 11th of March.

And to bridge the period from the 1st of April, 1920, when the highest price on this map is shown, I desire to read a dispatch which I saw in the Washington Post this morning, in which it is stated:

Operators were bidding 16.5 cents f. o. b. for Cuban, equal to about 17 cents, cost and freight, or about 18.05 cents duty paid.

So that yesterday's price had risen to 16.5 cents, f. o. b. Cuba, from about 12.5 cents the 1st of April—that last figure is given in the printed table submitted by me the other day, to be exact, at 12.62 cents.

I want to state to the committee that when we ended our last hearing, the honorable Representative from South Carolina was asking a number of questions in relation to the zoning and other matters concerning the Sugar Equalization Board control.

Mr. Zabriskie, who was chairman of the equalization board, is here this morning; and those questions can be asked of him, if the honorable Representative from South Carolina desires, and very much more complete and informative answers can be obtained from him than can be obtained from me.

Now, I have an interview which I want to put into the record, which purports to have been made by Mr. Zabriskie in the New York Globe of December 29, 1919. That interview was printed again on January 10, in the Literary Digest. Mr. Zabriskie is now here—

Mr. SUMNERS (interposing). Let me interrupt you just a minute. Is Mr. Zabriskie going to appear before the committee?

Mr. TINKHAM. Mr. Zabriskie is here.

Mr. SUMNERS. Would it not be a good idea, then, before you put that interview in, to have him state whether he made the statements contained in it, so that we may not unnecessarily encumber the record.

Mr. TINKHAM. I will say that Mr. Zabriskie is here, and Mr. McCann is here, who interviewed him; and I thought it well that the actual interview as printed be inserted in the record, and then Mr. Zabriskie can be questioned, and also Mr. McCann, if there are any variations, just simply for the record.

Mr. SUMNERS. Yes, I understand; but it seems to me that if you are going to make a record, you ought to make the record by the best evidence that can be had. The witness is here, and I suggest that the best evidence would be for him to make his own statement. Now, if you want to put it in the record after I have made those observations, I am willing.

Mr. HUSTED. I think it would probably go into the record some time anyhow; and it might as well go in now. There is no question that Mr. Zabriskie can come on the stand later and testify concerning it.

Mr. TINKHAM. I should like to put it in the record, Mr. Chairman; and then we can have the evidence, which is Mr. Zabriskie's statement, and Mr. McCann's statement, if necessary.

The statement made by Mr. Zabriskie, which appeared in the New York Globe of December 29, 1919, and in the Literary Digest of January 10, is as follows:

The sugar situation is now hopeless for the reason that it has got into politics, and the sooner it gets out the better. The ridiculous price of 17 cents wholesale for raw sugar now charged by the Louisiana planters is an outrage. I can't say that Attorney General Palmer fixed the price, but it was known in Louisiana that he would stand for it.

It was known, furthermore, that he approved it. It was this folly that inspired the Cubans to make their gouge. When they saw American sugar planters getting away with 17 cents they decided it was perfectly legitimate for them to get some of the plunder, and to-day the people are paying the price for the Attorney General's mistake.

Had the Sugar Equalization Board been permitted to exercise its own judgment, instead of the country facing a famine as it now does, we would have had the largest crop of sugar in history at 6½ cents a pound.

That is the end of the statement. Of course, Mr. Zabriskie referred to the request made by the Sugar Equalization Board of the President to allow the purchase of the Cuban crop, which he says could have been purchased at that time, namely, in September, at 6½ cents per pound.

Mr. SUMNERS. What has that got to do with the Attorney General's action in fixing the price?

Mr. TINKHAM. One of the claims in this case, Mr. Chairman, is that the Attorney General, by fixing a price on Louisiana sugar, gave the impression that there was an official American price to the Cuban producers, and that that stimulated the Cuban market; that that was one of the natural and proximate and immediate effects of his action. And this committee is asked, in the first paragraph of the resolution, to inquire as to fixing of this price.

I claimed at the beginning of this hearing that what immediately preceded and what immediately followed, particularly as a consequence, I thought, was competent; and I said that if the committee did not feel that it was competent, then I would request the committee to go to the Committee on Rules and obtain an amendment, in order that it might become competent to use what evidence was offered, and to report on what the effect of the Attorney General's action was.

Mr. SUMNERS. Do you claim that the Attorney General should have prosecuted the Louisiana sugar planters if they sold sugar at above 17 cents, or at that price?

Mr. TINKHAM. My claim is—

Mr. SUMNERS (interposing). As I understand it, this is a complaint against an official?

Mr. TINKHAM. This is a complaint against an official.

Mr. SUMNERS. Yes; for the manner in which he discharged a specific official duty?

Mr. TINKHAM. I think he violated the law in discharging his duty. He had no authority to do what he did.

Mr. SUMNERS. Now, what has this interview got to do with the question of whether or not he ought to have prosecuted those men for selling sugar at 17 cents?

Mr. TINKHAM. I think I have given you the reasons, namely—

Mr. SUMNERS (interposing). Do you mean to say that he ought to have prosecuted the Louisiana men who sold sugar at 17 cents, if that would not have been a profiteering price, if thereby he could have held down the price of Cuban sugar?

Mr. TINKHAM. That is going to another question.

Mr. SUMNERS. I think that is the direct question involved here.

Mr. TINKHAM. My claim is this: That the only authority the Attorney General had was to prosecute profiteers. That if the price at which sugar was sold by a particular producer, or by a particular refinery, if it was a refinery that was being considered, was an unreasonable price in that class of cases, or sugar coming from that part of Louisiana where there had been very little damage to the crop—if he was making an undue profit on what he was selling, the right and power of the Attorney General was unquestionably limited to prosecuting that man as a profiteer, no matter how difficult it might be; and the question of Congress giving other authority is not involved. My claim is—and the case is valueless unless my claim is sustained—that the Attorney General had no other power except to prosecute a man for profiteering.

Mr. SUMNERS. Well, what effect would his prosecution of a Louisiana man for profiteering have on the price of Cuban sugar?

Mr. TINKHAM. I have stated two or three times during this hearing that the committee was authorized, first, to inquire into the actions of the Attorney General, and then, among other things, to find out what the Attorney General's authority was; and whether he gave immunity to profiteers.

But I said that, in inquiring into the general facts which the committee was asked to inquire into, of the Attorney General fixing the price, it seemed to me that anything that preceded or anything that followed his action immediately was competent to consider.

Mr. SUMNERS. Well, anything that he did, of course—

Mr. HUSTED (interposing). Well, we have gone over this line of argument several times.

Mr. TINKHAM. Perhaps I have not made myself clear, Mr. Chairman.

Mr. SUMNERS. I think you have not.

Mr. TINKHAM. And I want to make myself clear. The point is this: That Cuban sugar was selling in December at not more than 6½ or 7 cents a pound f. o. b. Cuba; and that when the Attorney General fixed the price of 17 and 18 cents as the maximum price in Louisiana, it was known in Louisiana, and it was known and published in Cuba; and the effect of that publication that that was, in effect, the official price in the United States, must of necessity have, and did have, a stimulative effect upon the Cuban market. If it did, it seems to me that it is reasonable for the committee to receive evidence as to whether, because of the Attorney General's action, the Cuban market was stimulated.

Mr. HUSTED. We are investigating all the facts and circumstances in relation to this transaction which the Attorney General and the United States attorney in Louisiana had with the Louisiana sugar producers; and under that, it seems to me entirely proper to inquire not only into the legal justification for that action, but into any justification from the standpoint of public necessity—any moral justification, any justification from the standpoint of saving the taxpayers from an excessive price of sugar; and it seems to me that under those circumstances it is entirely proper to inquire into the effect of the Attorney General's action; whether there was any justification for it of any kind, and what the effect of it was; whether the effect of it, instead of to reduce the price of sugar, was to increase it.

Mr. SUMNERS. I can understand the justification for that position, provided it is claimed here that the Attorney General ought to have prosecuted every producer of sugar in Louisiana that sold at a profiteering price, and that profiteering price operated to increase the prices of the Cuban crop. Otherwise, I can not see the relevancy of those statements as to the Cuban crop.

Mr. HUSTED. Well, the Attorney General—call it what you please—practically fixed the price in Louisiana at 17 and 18 cents a pound, according to the kind of sugar, at the plantation. There was no prosecution; he instituted no prosecution; he acted out of court. He came to a sort of agreement with these people, which, as I understand it, was practically a pledge of immunity against prosecution, if they did not charge more than 17 and 18 cents; the effect of it was that if they did not charge more than that he would not prosecute them. He allowed them to continue to sell without any fear of prosecution at his hand.

Now, we are inquiring into the effect of that action: Did the effect of that action reduce the price of sugar to the American consumer, or did it raise the price of sugar? Mr. Tinkham is producing evidence here to the effect that it did raise the price of sugar; that, instead of reducing the price of sugar, it raised the price of sugar; and that the effect of that action has cost the American people a great many millions of dollars.

Mr. SUMNERS. In connection with that statement, the record shows that, before the price of 17 cents was determined upon, the Attorney General called into consultation the producers and consumers and called in the Agricultural Department experts, and that that price was determined upon as the price at which, in his judgment, a prosecution for profiteering could not be sustained.

I would like to ask the witness a question in connection with his testimony at the preceding hearing, if he has concluded this particular phase of his statement. Mr. Tinkham, have you concluded with this phase of your subject?

Mr. TINKHAM. No; I have not. Do you want to ask me a question?

Mr. SUMNERS. I did want to ask you a question on your testimony in the last hearing.

Mr. TINKHAM. Well, you can ask it now, if you want to.

Mr. SUMNERS. Just before we adjourned at the last hearing you presented some figures to the committee, from which you concluded that, as you stated, if the price of Louisiana sugar was 2 cents above a given price, it would increase the cost of that crop about \$18,000,000.

Mr. TINKHAM. Yes.

Mr. SUMNERS. Then you presented some figures to show that a 2-cent increase on the Cuban crop would increase the cost of sugar to consumers a great many more millions of dollars?

Mr. TINKHAM. Yes.

Mr. SUMNERS. Now, do you claim that such an increase was due to the action of the Attorney General?

Mr. TINKHAM. I would not want to be bound to the statement that the actual figures that I gave as to the differences were caused by the action of the Attorney General; but I claim that the action of the Attorney General in fixing what would appear to be the Government price in Louisiana for sugar undoubtedly had a very stimulative effect on the sugar market, particularly the Cuban sugar market.

Now, I wanted to show, and I did show by the figures, if the Louisiana crop had sold for 26 cents, instead of 18 cents, what the difference would have been on the amount of Louisiana sugar. And then I gave figures in relation to the amount of the Cuban sugar produced in Cuba last year, and on that basis showed what a 2-cent rise in that market would cause in the Cuban market and in the American market, and balanced what would have been saved by the difference between 18 cents for Louisiana sugar and 26 cents for Louisiana sugar against a 2-cent rise in the Cuban market.

Mr. SUMNERS. Then if, as a matter of fact, the action of the Attorney General, at the time it was taken, pulled the Louisiana crop down from 20.5 cents to 17 and 18 cents, and, if, as a matter of fact, that action prevented the Louisiana crop from going to 26 cents—those are the figures you have given?

Mr. TINKHAM. Yes.

Mr. SUMNERS (continuing). Then, did his action result in a saving to the American people; and if so, what is your estimate of the saving?

Mr. TINKHAM. If the Louisiana crop would have gone to the figure you suppose—

Mr. HUSTED (interposing). You have testified to all of that, have you not?

Mr. TINKHAM. I have.

Mr. HUSTED. That is in the record?

Mr. BOIES. I would like to ask one question: Is it the object of this investigation primarily to get into the record the opinions of the witness, or to get from the witness a statement of the facts connected with the history of the case?

Mr. SUMNERS. I think that is an important question.

Mr. TINKHAM. It seemed to me that I was here to present certain definite evidence, which I had given to the House, and upon which this investigation was ordered.

Mr. BOIES. I think so myself; and I think we should proceed along that line.

Mr. TINKHAM. But I have been perfectly willing to give any information I could, and to even go so far as to give opinions where I do not think I was either competent to give an opinion or ought to have been asked for one.

Mr. HUSTED. Well, I do not want to appear as not being willing to have the witness reasonably questioned touching any matter that he has brought to the attention of the committee; but I do not think

we want to cumber up the record with repetitions of matters that have already been testified to, in plain language, clear and unmistakable. Now, this matter has all been gone over before——

Mr. SUMNERS (interposing). I agree with the chairman about that; it seems to me that the only pertinent fact in this case is, that the Attorney General told those people down there that if they sold sugar above 17 and 18 cents they would be prosecuted—or whatever the statement was.

Mr. HUSTED. Well, that is all a matter of documentary evidence; that is contained in the district attorney's telegram and in the telegram of the Attorney General concurring in the action of the district attorney in Louisiana. Now, we are going into the effect of that action.

Mr. SUMNERS. And the witness is speculating about the effect of that action; and we have got to ask him questions to get at the grounds of his speculations.

Mr. HUSTED. Well, the witness has stated some facts. The witness has shown that the Cuban market, as a matter of fact, had been stimulated; that the prices of Cuban sugar had been greatly advanced, and that that advance took place right after the action of the Attorney General in fixing this price of 17 and 18 cents. Now, as a matter of fact, the price of Cuban sugar advanced more than 2 cents a pound, and Mr. Tinkham showed some facts in connection with that. He showed that, even if Louisiana sugar had sold at a maximum market price of 20.5 cents, the saving to the American people on the entire Louisiana sugar crop was more than offset by the loss to the American people from the advance of 2 cents on the Cuban crop; that the net difference, in the shape of loss to the American people, amounted to a great many millions of dollars.

Mr. SUMNERS. Yes; and we have the right to question him to find out as to the soundness of his argument.

Mr. HUSTED. Yes; certainly you have.

Mr. SUMNERS. And that is straight argument he is giving the committee. I never thought that argument was proper in these cases; but if the witness wants to argue, I want to develop the basis of his argument.

Mr. WHALEY. Mr. Chairman, I was not here when the hearing commenced this morning; but I gather that there is some difference of opinion between the witness and the committee as to whether the committee has the right to ask questions to test the soundness of the facts on which he is basing his argument.

Mr. HUSTED. The witness has not said that. He is ready and willing to answer any questions; only he has been asked the same questions over and over again, which are all in the record; there is no question about that. And I entered a very mild and gentle protest against cumbering up the record with matters which have already been testified to; and there can not be any difference of opinion between the committee and the witness as to his willingness to answer questions; and we want to get along as rapidly as we can.

Mr. TINKHAM. Mr. Chairman, I want to take up now the last question which I suggested in my presentation, namely the false statement made by the Attorney General.

The following statement was made by the Attorney General December 5, 1919, and inserted in the Congressional Record of December 5, page 211:

A conference has been held this morning between representatives of the Sugar Equalization Board and the Department of Justice, in which the sugar situation was reviewed. The Department of Justice has neither the power nor the facilities with which to control the purchase or distribution of sugar. The only governmental body having this power is the Sugar Equalization Board, and its control terminates on December 31.

And the next is the false statement to which I desire to draw the attention of the committee.

Mr. WHALEY. What are you reading from?

Mr. TINKHAM. I am reading from an excerpt from the Congressional Record.

Mr. WHALEY. Well, who put that in the Congressional Record?

Mr. TINKHAM. That was put in the Congressional Record by Mr. Byrnes of South Carolina.

Mr. WHALEY. Was that not inserted in the record of these hearings once? I am satisfied that it was.

Mr. TINKHAM. Yes; it was offered as evidence that the Attorney General——

Mr. HUSTED (interposing). I think that is already in the record, Mr. Tinkham.

Mr. TINKHAM. Then you do not desire me to read it again?

Mr. HUSTED. No; not if it is already in the record.

Mr. TINKHAM. This is the statement that I want to challenge:

The Congress, although requested to do so, has failed to extend the life of the board.

Mr. SUMNERS. Right in that connection, I would like to ask you what that has got to do with the propriety of the action of the Attorney General? I just want to find that out.

Mr. TINKHAM. Because that is a statement of the Attorney General in connection with his action in relation to sugar. If that is not competent, I do not know what is.

Mr. SUMNERS. Well, I confess that that statement is true; but I understood that we had tried to narrow this thing down to the facts as to the Attorney General's action. I am willing for you to go outside, but when you go outside I want to follow you.

Mr. TINKHAM. Well, that is perfectly fair. But here is a statement made by the Attorney General in the Congressional Record——

Mr. WHALEY (interposing). It is not made by the Attorney General; it is made by a Member of Congress in the Congressional Record.

Mr. TINKHAM. Excuse me——

Mr. WHALEY. And that is what we are objecting to all along, that you are cumbering this record with the statements of third parties who have nothing to do with the matter.

Mr. TINKHAM. Mr. Chairman, this was put in as a statement of the Attorney General by Mr. Byrnes of South Carolina; it was so stated by him, and is in quotation marks as coming from the Attorney General; and it will be found in the Congressional Record of December 5, 1919. It is not a statement by Mr. Byrnes; it is a statement by the Attorney General offered by Mr. Byrnes; and is a statement which bears directly upon the authority of the Attorney General,

which is being challenged, in relation to the fixing of sugar prices in Louisiana. If that is not competent, I do not know what evidence can be competent at this hearing. I want to be entirely fair.

Mr. HUSTED. Was it offered by Mr. Byrnes at the time as a justification for the action of the Attorney General in fixing the prices of sugar in Louisiana?

Mr. TINKHAM. During the debate in the House, in relation to an appropriation bill, a statement was made that the Attorney General had stated that Congress had not given funds for the prosecution of profiteers under the Lever Act. The chairman of the Committee on Appropriations, Mr. Cood, took the floor and denied that that was the case. Mr. Byrnes replied that the Attorney General had never made any such statement; "that he (the Attorney General) had not been provided with funds"; and he asked leave to print in the Congressional Record an authoritative statement from the Attorney General as to what the Attorney General had said. And subsequently, at that session, or at the next session, he had printed in the Record what he claimed was an authoritative statement from the Attorney General. That is the statement that I have read at one of these hearings, and that I was attempting to read now, and a part of it I am now challenging as being false.

Mr. HUSTED. Was the accuracy of that statement challenged?

Mr. TINKHAM. When?

Mr. HUSTED. At any time, as not being a statement of the Attorney General?

Mr. TINKHAM. Never has it been suggested that it was not his statement before.

Mr. SUMNERS. Mr. Chairman, I just want to make this observation, that the law governing the duties and the powers of the Attorney General is a matter of statute; it does not require any testimony here to establish it. There is practically no dispute with regard to what the Attorney General did in Louisiana. And it seems to me that those are the salient, important, and only competent features of this investigation.

Mr. HUSTED. Yes; but we are going further than that; we are going into all the facts and the circumstances surrounding his action in Louisiana; we are going into all the facts and circumstances; the justification for it—what justification, if any, there was, of any kind, name, or nature.

Mr. WHALEY. As I understand that statement, Mr. Chairman, the door is thrown wide open.

Mr. HUSTED. So far as this affects any facts or any circumstances surrounding his action in Louisiana.

Mr. WHALEY. Then the witness can not object to any questions asked him; the door is wide open, and we can ask him any questions on this subject that we desire.

Mr. HUSTED. Certainly; you have a perfect right to ask him any questions on this subject.

Mr. WHALEY. I understand that the witness the other day was denying the right of members of the committee to ask him questions except on two points.

Mr. HUSTED. Well, I did not understand that the witness took such a position; and if he did take such a position, in my opinion, it would

not be a correct position. I did not understand that he took that position.

Mr. TINKHAM. Mr. Chairman, I think the record discloses that I have been extremely voluminous in answering questions, and have not avoided or evaded any. The record will disclose whether my statement is true or not. I am not really an expert on this subject. I came here with very definite evidence, and with a very definite case, and I have tried to present it. I have tried to hold the issues as closely as possible to the ones that I thought were involved in the order before the committee.

Mr. HUSTED. And you rely upon your statements being substantiated by the testimony of witnesses familiar with the facts.

Mr. TINKHAM. I hope they will be.

Mr. SUMNERS. I suggested the policy, so far as the record is concerned, that we put in the witnesses who are said to be familiar with the facts, and who are said to be now present, in order to hold down the volume of the record.

Mr. TINKHAM. Shall I proceed, Mr. Chairman?

Mr. HUSTED. You may proceed.

Mr. TINKHAM. Referring to the Attorney General's statement of December 5, the words, "The only governmental body having this power is the Sugar Equalization Board, and its control terminates on December 31. The Congress, although requested to do so, has failed to extend the life of the board," are misleading if not false, first, because the equalization board, a corporation incorporated in the State of Delaware, in accordance with the sixth article of its incorporation, began its existence July 16, 1918, and its existence was not to cease until the 14th day of July, 1923, unless sooner dissolved in a manner provided by law.

I desire to offer to the committee the articles of incorporation of the Sugar Equalization Board.

(The articles of incorporation referred to are as follows:)

CERTIFICATE OF INCORPORATION OF UNITED STATES SUGAR EQUALIZATION
BOARD (INC.).

First. The name of this corporation is United States Sugar Equalization Board (Inc.).

Second. The location of its principal office in the State of Delaware is in the city of Wilmington, county of New Castle. The name of the resident agent therein and in charge thereof is the Delaware Charter Co. The street and number of said principal office and the address by street and number of said resident agent is 900-904 Market Street.

Third. The objects and purposes for which and for any of which this corporation is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz: To purchase, or otherwise acquire, manufacture, sell, or otherwise dispose of, store, handle, and otherwise deal in and with raw and refined cane and beet sugar, sirups, molasses and other commodities, and to do all acts and things necessary expedient or incidental to the efficient conduct of said business within or without the State of Delaware.

To exercise all powers which may be delegated to it by the President of the United States.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

In general, to have and to exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to.

Fourth. The total authorized capital stock of this corporation is \$5,000,000, divided into 50,000 shares of \$100 each.

The amount of capital stock with which this corporation will commence business is the sum of \$1,000, being 10 shares of \$100 each.

Fifth. The names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows:

Name.	Residence.	Number of shares.
George M. Rolph.....	San Francisco, Calif.....	4
Theodore F. Whitmarsh.....	New York, N. Y.....	3
George A. Zabriskie.....	do.....	3

Sixth. This corporation is not to have perpetual existence. Its existence is to commence on the 15th day of July, 1918, and is to cease on the 14th day of July, 1923, unless it is sooner dissolved in the manner provided by law.

Seventh. The property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The directors of this corporation shall hold office for one year from the date of their election and until their successors are elected and qualified, unless sooner removed. The holder or holders of two-thirds of the outstanding capital stock may call a special meeting of the stockholders at any time, upon mailing notice to the other stockholders of the time and place of said meeting, three days prior to said appointed time, which notice may be waived by unanimous consent, or by the presence of all stockholders at said special meeting; and the stockholders present may by a majority vote remove any director or directors from office and elect a successor or successors to hold office for the remainder of the unexpired term.

In furtherance, and not in limitation, of the powers conferred by statute, the board of directors are expressly authorized to make, alter, amend, and rescind the by-laws of this corporation, and to authorize and cause to be executed mortgages and liens upon the personal property of this corporation, and to authorize the borrowing of such sums of money from time to time, and the making and execution of such notes, mortgages, pledges, and liens on the personal property of this corporation, as they may, deem advisable.

This corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of any act of the Legislature of the State of Delaware entitled "An act providing a general corporation law" (approved March 10, 1889), and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals this — day of July, 1918.

_____. [SEAL.]
 _____ [SEAL.]
 _____ [SEAL.]

In presence of—

UNITED STATES OF AMERICA.
 District of Columbia, ss:

Be it remembered that this —, 1918, personally came before me, a notary public for the District of Columbia, parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledge the said certificate to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

[SEAL.]

 Notary Public, District of Columbia.

Mr. TINKHAM (continuing). Second, the contracts which it had with the Louisiana beet sugar and Cuban sugar producers as well as the contracts with the refiners expired by December 31, but it had full power and control to purchase the Cuban crop and other sugar crops if it desired, but had taken the position that it would not purchase without the assent of the President who was the sole stock owner, and had recommended the purchase of the Cuban crop to the President August 14, 1919, and again September 20, 1919. No recommendation was made to Congress by the President or the equalization board to extend the life of the board, and the sugar question was not brought to the attention of Congress until October 3, when a hearing was held for the first time on sugar by the Agricultural Committee of the Senate, at which time Mr. Zabriskie, president of the Sugar Equalization Board, among other evidence, submitted the following letter September 23, 1919:

THE PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: The inclosed copy of a letter from Messrs. Hawley and Rionda, representing the sugar producers of Cuba, is self-explanatory, and in view of the fact that about one-third of the Cuban crop of next year has since been disposed of for export to countries other than the United States, we believe that the situation is out of hand.

Therefore, in order to protect the interests of the American consumer we have advised American refiners as to conditions so that they may purchase raw sugar as per prewar times.

Very respectfully,

GEORGE A. ZABRISKIE,
President United States Sugar Equalization Board (Inc.).

A copy of this letter will be found on page 59 of the first hearing on sugar shortage of the Agricultural Committee of the Senate.

On page 63 of the said hearing on the same date, October 3, the following colloquy occurred:

Senator RANDELL. I think it is quite important at this point to get Judge Glasgow's judgment on what legislation should be enacted.

Mr. GLASGOW. I have not figured that out.

On page 96 of the hearing before said committee, held on October 18, 1919, the following statement appears as made by William A. Glasgow.

Mr. WHALEY. Who is Mr. Glasgow?

Mr. TINKHAM. Mr. Glasgow is right here now, and he was general counsel of the Sugar Equalization Board, and I am reading his testimony before the Senate committee to show that the equalization board made no recommendations to Congress.

Mr. GLASGOW. That is not quite correct.

Mr. TINKHAM. Well, I want to read this testimony before that committee.

Mr. GLASGOW. I want to make it perfectly clear that that board is not pressing any legislation on Congress. The members of that board will be delighted at the end of the 31st day of December this year to wind up its affairs and get out of the way. They have expressed in the recommendation which was exhibited here and sent to the President and to you at the committee hearing the other day their views in reply to questions which have been asked as to what they thought could be done for the coming year in their judgment. It is a matter for Congress to determine.

You have asked me to prepare a bill setting forth certain powers, as we thought it necessary for that board to have if Congress thought it was proper to purchase the Cuban crop of sugar next year. I prepared that bill and forwarded it to you as, in our judgment, what was necessary in case you should determine it was desirable

to purchase that crop. We are not pressing that bill before Congress or before this committee.

I do say, Mr. Chairman, on behalf of that board, that the powers in that bill are absolutely necessary to have, in our judgment, if you should decide to purchase the Cuban crop.

The statement "The Congress although requested to do so, has failed to extend the life of the board" is false; no request by the President was made, although suggested to him by the Sugar Equalization Board—

Mr. HUSTED. Is that your statement now, or are you still reading from the Senate committee hearings?

Mr. TINKHAM. This is my statement.

Mr. HUSTED. Where did your statement begin?

Mr. TINKHAM. The statement of Mr. Glasgow ends with the words "if you should desire to purchase the Cuban crop." Then my statement begins; I will repeat it:

The statement that "the Congress although requested to do so has failed to extend the life of the board" is false; no request by the President was made, although suggested by him by the Sugar Equalization Board, and no request, as can be seen, was made by the equalization board, the only two governmental sources from which recommendations could be made.

I am basing my statement, I desire to say, Mr. Chairman, entirely upon the search of the records, and upon statements made before the Agricultural Committee of the Senate. And if there is some recommendation that I do not know of that has been made, of course, I shall withdraw immediately this charge.

I believe that the actual facts are these: That a suggestion was made to the President that legislation, if the equalization board was to continue, was necessary, but that the President never recommended legislation to the Congress, and that the equalization board took the position which I have quoted Mr. Glasgow as stating, namely, that they were not pressing any legislation on the Congress themselves, but they would like to wind up their affairs. And as I understand it (and I read the record of the Senate committee hearings very carefully), there was no recommendation made by the equalization board coming from it that there should be legislation passed and that they wanted it.

Mr. GLASGOW. Has that been questioned?

Mr. TINKHAM. No; not yet.

Mr. CLASSON. Let me ask you this question, Mr. Tinkham: Do you understand that legislation was necessary to enable the Sugar Equalization Board to purchase the Cuban crop in 1919?

Mr. TINKHAM. That is a technical question which I think I must answer in this way: The Sugar Equalization Board could, without the assent of the President, legally have purchased the crop. But as the President was the sole stock owner, the equalization board took the position, and very properly, that unless their chief stockholder, who had authorized the purchase in 1918, should authorize the purchase in 1919, they should not proceed. In other words, they had probably legal authority to do it, but they did not want to proceed without the authority of the President, who was the chief and only stockholder—and I do not think you or I would have wanted to proceed under those circumstances without his assent.

Mr. CLASSON. That was not quite my question. Was there any legislation by Congress necessary to empower the equalization board to purchase the crop?

Mr. TINKHAM. Not to purchase the crop; no. But the equalization board took the position that, if they were going to purchase the crop, as the Lever act, which gave them the licensing control over the price, would expire with the declaration of peace, that they must have power to license if they were going to purchase the crop; otherwise, having purchased the crop, they would not have the power over sugar after the purchase.

Mr. CLASSON. Yes; I understand.

Mr. TINKHAM. And they recommended, as I understand it, to the President, that if he authorized the purchase of the crop, then, of course, the Congress should be asked for that authority. But I did not understand that the President requested Congress to act; and I do not understand that the equalization board took any other position, except that if they were authorized to act in purchasing, they wanted that authority to license.

Mr. CLASSON. I see.

Mr. TINKHAM. Now, as I say, there may be some other evidence; and I am basing my entire claim upon my investigations, particularly a very careful reading of the Senate Agricultural Committee hearings.

Mr. WHALEY. Now, let me ask you a question right there: The object of getting the power to license was for the purpose of distribution after the purchase had been made, was it not?

Mr. TINKHAM. The power of control, rather than of distribution.

Mr. WHALEY. Well, did the Sugar Equalization Board have any power of distribution after the purchase?

Mr. TINKHAM. They had a power of allocation; you might call that distribution; I do not think they physically distributed sugar; they sat as an allocation board, selling, in a wholesale way, and making their prices and contracts.

Mr. WHALEY. How did they distribute it in 1918?

Mr. TINKHAM. I understand they did it in that way, as an allocating board.

Mr. WHALEY. Now, as a matter of fact, did not the food control—did not Mr. Hoover and his crowd, the Food Administration—distribute the sugar after the Sugar Equalization Board had purchased it?

Mr. TINKHAM. They may have; I would not want to deny that that was the fact.

Mr. WHALEY. And as a matter of fact, the Sugar Equalization Board had no means of distribution; they had no power and they had to seek power from Congress, which was denied them.

Mr. TINKHAM. I do not think that is so.

Mr. WHALEY. But you do not know that it is not true, do you?

Mr. TINKHAM. I would not want to state as an absolute matter of fact that it is not true; no.

Now, for further proof of these assertions I desire to refer to page 100 of the said hearings on sugar shortage by the Senate Committee on Agriculture:

Senator RANDELL. I want to know, Judge, how you expected to handle this Cuban crop when you sought authority from the President in August and again on September 22. Did you contemplate that you must have legislation in addition to his authority?

Mr. GLASGOW. Yes, sir; and so stated in the memorandum furnished to the President. You said "when you sought authority from the President." We did not do that. We suggested to him that in our judgment we thought the Cuban crop ought to be bought as a commercial proposition. As to the question of whether it was good policy or not, that was not for us to determine, but the Administration must determine the policy. We stated, however, in the same memorandum that if it was determined that it was the policy of the Government to do it, certainly legislation would have to be asked of Congress in order to continue the operation of that license.

In other words, the Sugar Equalization Board recommended to the President the purchase of the Cuban sugar crop, and if the crop was purchased, then the board was to be given certain powers which they needed to control what they had purchased when the Lever Act went out of effect. But the President never recommended that course; the attitude of the equalization board itself before the committee of Congress was that they were willing to do what was imposed upon them; but they were not anxious to do it, and therefore they did not recommend it to Congress themselves, and because the equalization board did not recommend anything itself to Congress, I take the position that the statement that "the Congress, although requested to do so, has failed to extend the life of the board" was not true.

Mr. CLASSON. Well, any legislation that might be required was absolutely contingent upon the purchase of the crop, was it not?

Mr. TINKHAM. I should say that that is absolutely true.

Mr. CLASSON. When it was determined not to purchase the crop, that ended the question?

Mr. TINKHAM. That ended the question. If the crop was not to be purchased, that ended the necessity for this legislation.

The history of the McNary bill, giving the Sugar Equalization Board licensing power upon expiration of the Lever Act, which gave that power, is as follows:

On September 27, Senator New introduced an order of investigation of the price and shortage of sugar to be conducted by the Senate Committee on Agriculture. Hearings were given by this committee October 3, 18 and 21, testimony from which I have quoted. The bill was passed by the Senate December 12. The House Agricultural Committee held a hearing December 15, and on December 16 the bill was passed by the House.

Mr. WHALEY. Let me ask you a question. You referred to the McNary bill; let us get at what the McNary bill was. Was that the bill that the Sugar Equalization Board, or Mr. Glasgow, recommended to the Senate should pass?

Mr. TINKHAM. It was a bill which covered some points of his suggestions to the committee; if Congress was going to continue authority in the board, and the Cuban crop was to be purchased.

Mr. WHALEY. In other words, you construe the McNary bill to be the bill that Mr. Glasgow drew for the committee?

Mr. TINKHAM. Drew at the suggestion of the committee, after the circumstances that have been related, and that are in the record.

Mr. GLASGOW. That is not quite correct.

Mr. TINKHAM. Mr. Glasgow says that that is not the bill he drew. I think some portions of it are the bill that he drew; perhaps not the exact language. As a matter of fact, I did not read Mr. Glasgow's bill; but I think his bill contained, for instance, provisions as to zones,

and those are not in the McNary bill. But I think that his bill also contained the power of licensing, and that was in the McNary bill.

Mr. WHALEY. Is Mr. Glasgow here at this time?

Mr. TINKHAM. Yes; he is here; that [indicating] is Mr. Glasgow.

Mr. WHALEY. He will testify later, will he?

Mr. GLASGOW. I will be very glad to do so.

Mr. TINKHAM. As I stated, the bill passed the House on December 16; the conference report was agreed to on December 20, and the bill was approved December 31, and became Public Law No. 109.

I hope the committee will take no offense if I suggest that, when the Attorney General appears, after he has made his general statements and explanations, the following questions be asked him, and that he be asked to make a categorical reply, as I believe they are fair questions and should be answered:

First. What authority he had for his action in concurring in an agreement to allow Louisiana producers to sell sugar at 17 cents for yellow clarified, and 18 cents for plantation granulated, at the plantation, and set up a prima facie case, as indicated in his telegram of November 8, 1919, to United States Attorney Mooney, of New Orleans, La.?

Second. Whether he was not precluded, either in honor or in law, from prosecuting the Louisiana producers who, at 17 and 18 cents, might be profiteering, by his agreement?

The committee should insist, it seems to me, upon a categorical answer to those questions, and also to the question what governmental authority requested Congress to extend the life of the Sugar Equalization Board, and in what form the request was made, and upon what date?

Mr. WHALEY. What is your idea of a categorical question, and a categorical answer?

Mr. TINKHAM. My idea of a categorical answer is that it shall be explicit.

Mr. WHALEY. Yes or no?

Mr. TINKHAM. Not necessarily so.

Mr. WHALEY. I am just asking you that, because you declined to answer yes or no in all of this hearing; and I wanted to know why one rule should apply to you and another rule to the Attorney General.

Mr. TINKHAM. No rule should apply to the Attorney General that is any different from the rules that apply to any other witness, although I deny I am a witness; but I think that plain questions should be asked and plain answers given. Many questions can not be answered yes or no, without misleading as to the meaning of the person answering.

Mr. Chairman, I have finished my presentation and am ready for any questions.

Mr. HUSTED. Does any member of the committee desire to question Mr. Tinkham any further?

If not, we will ask Mr. Zabriskie to take the stand.

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY.

JAMES W. HUSTED, *Chairman.*

**DAVID G. CLASSON.
W. D. BOIES.**

**RICHARD S. WHALEY.
HATTON W. SUMNERS.**

**INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL
RELATING TO THE PRICE OF LOUISIANA SUGAR.**

SERIAL No. 21, PART 3.

**SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 13, 1920.**

**STATEMENT OF MR. GEORGE A. ZABRISKIE, PRESIDENT OF THE
UNITED STATES SUGAR EQUALIZATION BOARD (INC.), NEW
YORK CITY.**

(The witness was duly sworn by Mr. Husted, according to law.)
Mr. HUSTED. Mr. Zabriskie, you were chairman, I believe, of the
Sugar Equalization Board?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. At what time did you assume the chairmanship?

Mr. ZABRISKIE. About the 1st of February, 1919.

Mr. HUSTED. The 1st of February?

Mr. ZABRISKIE. Yes, sir; as the president of the board.

Mr. HUSTED. And you continued as president until what time?

Mr. ZABRISKIE. Until the present time.

Mr. HUSTED. You are still president of the board?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. Did you have an interview with Mr. McCann, of the New York Globe, regarding the action of the Attorney General of the United States in agreeing to certain prices at which certain sugar might be sold in Louisiana?

Mr. ZABRISKIE. I had two brief telephone communications with Mr. McCann.

Mr. HUSTED. You have heard read by Mr. Tinkham the statement of that interview which was published in the New York Globe and also in the Literary Digest, have you?

Mr. ZABRISKIE. I have.

Mr. HUSTED. Is that a substantially correct statement of that interview?

Mr. ZABRISKIE. Substantially correct, except that Mr. McCann, I think, will admit that it has been quite elaborated upon.

Mr. HUSTED. Will you state, as you remember it, the substance of what took place at that interview?

Mr. ZABRISKIE. As I recall it the Louisiana situation was becoming acute. About August and September sugar developed a very serious shortage in the United States. The only sugar that was coming on the market freely at that time, or beginning to come on the domestic market, was the beet sugar of the Western States and a little later Louisiana sugar.

The price at which the beet sugars were available was about 10 or 10.5 cents. At that time the Attorney General was very desirous of holding prices down, as we all were; and it developed that he sent a telegram to beet-sugar manufacturers to the effect that any sales of sugar above 10 cents would be subject to investigation. The Equalization Board concurred in that; and the reason that they felt that 10 cents was a proper price was because many of the beet-sugar producers and manufacturers had offered their products to the board at that time at that price.

The Louisiana situation was quite different. In Washington, pending what was about to happen, or what might have happened, in Congress or at the instance of the President, we felt that the Louisiana crop, which was only estimated at 125,000 tons, had the board remained in existence we would purchase that crop outright, and it was offered to us by many of the representatives of Louisiana that were there—the sugar producers—at 15 cents.

It was the board's idea that we purchase this Cuban crop at 6.5 cents, to establish about an 11-cent price throughout the country—

Mr. GLASGOW (interposing). Retail?

Mr. ZABRISKIE. Wholesale. And the beet-sugar interests were agreeable to that price. We could have taken up the slack on these figures, 125,000 tons, had we paid the Louisiana people, say, 14 or 15 cents, which they were agreeable to sell at, and could have purchased

the Cuban crop at 6.5 cents, which would have allowed a toll of 2 cents to the American refinery, 1 cent a pound duty, and one-half of a cent freight, etc., which would have kept the price of Cuban sugar at 11 or 11.5 cents; the 11.5 cents would have been, in large measure, retail to the country.

Now, the effect of the Attorney General's sending his wire I am not prepared to state, because at that time Louisiana sugars were selling in Baltimore as high as 19 and 20 cents a pound. But as I recollect his wire to the Louisiana planters and producers, it was to the effect that any sugar sold at higher than 17 and 18 cents would be subject to investigation and prosecution.

Now, the effect of a higher price than 10 or 11 cents for Louisiana sugar would be, of course, on Cuba, to cause a little elevation in their ideas. But the Cuban crop has now gone to a point where it is up with Louisiana.

Mr. HUSTED. Did you state to Mr. McCann, in that interview which has been referred to, that the effect of the Attorney General's action was to increase the price of the Cuban crop?

Mr. ZABRISKIE. I do not think that Mr. McCann would consider that I said it in that way.

Mr. HUSTED. Well, did you say that the sugar situation, by the action of the Attorney General, had gotten into politics, and that that was a very unfortunate situation?

Mr. ZABRISKIE. I probably did say that. I felt that the sugar situation was getting into politics.

Mr. HUSTED. And that it was lugged into politics by this action of the Attorney General?

Mr. ZABRISKIE. I did not say that.

Mr. HUSTED. Did you say substantially that?

Mr. ZABRISKIE. No; I do not think I did. I said to Mr. McCann that the Louisiana situation did develop a feeling, just across the Gulf—in Cuba—that they might get more for their sugar. But that was very reasonable.

Mr. HUSTED. Well, it was reasonable, of course, that it would have that effect?

Mr. ZABRISKIE. It was reasonable that it would have that effect.

Mr. HUSTED. Now, did you state, as a matter of fact, that it did have that effect?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. Did you state that it was your opinion that it would have that effect?

Mr. ZABRISKIE. No, sir; I do not think I said that.

Mr. HUSTED. Did you state that, as a result of the Attorney General's action, or substantially—

Mr. ZABRISKIE (interposing). No, sir. I never made any charge.

Mr. HUSTED. Pardon me. I had not finished my question.

Mr. ZABRISKIE. I beg your pardon.

Mr. HUSTED. Did you state that as a result of the Attorney General's action the price of sugar in Cuba advanced and that the Cubans made their "gouge" as a result of that?

Mr. ZABRISKIE. Mr. McCann is here, and he knows perfectly well that I never made use of any such language.

Mr. HUSTED. Well, will you state just what you did state to Mr. McCann?

Mr. ZABRISKIE. I did say that the advance in the price of sugar in Louisiana did have an effect upon the producers of sugar in Cuba.

Mr. HUSTED. And that it did stimulate the price in Cuba?

Mr. ZABRISKIE. It would stimulate the price.

Mr. HUSTED. It would stimulate the price in Cuba?

Mr. ZABRISKIE. Yes; it would stimulate the price in Cuba, and it did stimulate the price.

Mr. HUSTED. And it did stimulate the price?

Mr. ZABRISKIE. I think so.

Mr. HUSTED. And as a result the American people paid more for their sugar?

Mr. ZABRISKIE. The market has advanced.

Mr. HUSTED. And you attribute that result directly to the action of the Attorney General?

Mr. ZABRISKIE. Absolutely not at all.

Mr. HUSTED (continuing). In agreeing on these prices in Louisiana of 17 and 18 cents?

Mr. ZABRISKIE. I want to make it clear, Mr. Chairman, that I do not understand that the Attorney General did agree upon any price in Louisiana. At the time that he sent his wires down there Louisiana sugars had sold as high as 19 and 20 cents in Baltimore.

The idea of the equalization board, had we been able to purchase that sugar, was not to permit 125,000 tons of sugar to make the price for the whole 4,000,000 tons that this country needed during the year. And our idea was to have those Louisiana people sell their sugar at 11 cents per pound, and we would make good the difference up to 15 cents per pound.

Mr. HUSTED. What the Attorney General actually did is quite clear?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. Because it is based upon documentary evidence.

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. The United States attorney in Louisiana stated that he had been in conference with the sugar producers in Louisiana—with a committee representing them—and he also talked the matter over with consumers in Louisiana, and that they had made a tentative agreement not to sell for more than 17 cents yellow clarified sugar at the plantation, and 18 cents for plantation granulated sugar at the plantation. This telegram was requesting the Attorney General's concurrence in his action. The Attorney General replied:

Your wire of the 8th, detailing results of conference. Consider agreed price rather high, but hereby concur in maximum fixed price of 17 cents for Louisiana plantation clarifieds, 18 cents for Louisiana clear granulated.

In your opinion, did that fix the maximum price?

Mr. ZABRISKIE. In my opinion, that was a mistake. And probably that is what Mr. McCann referred to. I did say to the Attorney General, or to his office, that I thought it was a mistake if a price had been fixed.

Mr. HUSTED. Well, do you not consider that that telegram fixed a maximum price?

Mr. ZABRISKIE. It might have, indirectly. The board was not aware of that.

Mr. HUSTED. The effect of it was to fix a maximum price?

Mr. ZABRISKIE. It was.

Mr. HUSTED. And it did do so?

Mr. ZABRISKIE. It stopped sugar from selling any higher than that.

Mr. HUSTED. And it kept sugar from selling any lower than that, also, did it not?

Mr. ZABRISKIE. It probably would have that effect.

Mr. HUSTED. Yes. Now, if Cuban sugar could be bought in September for 6.5 cents f. o. b. Cuba—which is a fact, is it not?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. And the Attorney General fixed a maximum price for Louisiana sugar on the 8th day of November of 17 and 18 cents, according to the kind or quality of sugar. Is it your opinion that such action on the part of the Attorney General had the effect of increasing the price of sugar for the American market sold in Cuba?

Mr. ZABRISKIE. It would have the effect of increasing the price in Cuba—well, I do not think the Attorney General fixed the price. I think I have stated that; I do not think the Attorney General fixed the price. As I took that, Mr. Chairman, the Attorney General's wire was to the effect that any sales at more than 17 and 18 cents would invite prosecution. I do not think that sales, even at less than that, might not invite prosecution, if there was evidence of profiteering on the part of the producer.

Mr. HUSTED. Well, I have read to you the Attorney General's telegram?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. And the Attorney General's telegram concurred in this arrangement?

Mr. ZABRISKIE. But you know, Mr. Chairman, that sugar produced in Louisiana was selling at many points much higher than 17 and 18 cents at that time.

Mr. HUSTED. Well, that is undisputed; that is, there is not any evidence to the contrary before us.

Mr. ZABRISKIE. And so far as profiteering is concerned, I think I stated before the McNary committee that, in view of the fact that production of sugar was so slight in Louisiana, it was almost a calamity; they had only about one-half of the normal crop; and perhaps there would be no profiteering in sugar sold there as high as 14 and 15 cents—perhaps at any price.

Mr. HUSTED. Well, you stated a few minutes ago that the effect of the Attorney General's action—

Mr. ZABRISKIE (interposing). Well, I do not like to put it—

Mr. HUSTED (continuing). Was to fix a maximum selling price for sugar in Louisiana; in other words, that after that action was taken, Louisiana producers would not sell for less than the price that was authorized by the Attorney General?

Mr. ZABRISKIE. Well, they did not have to sell at less than 16 and 17 cents, Mr. Chairman, and they were able to get more. But you understand that so far as the equalization board was concerned our prime desire was, if the thing went the way we recommended it, to have that Louisiana sugar sold at 11 cents, and the board would absorb the difference between 11 cents and whatever necessary to let the Louisiana man out whole.

Mr. HUSTED. Now, we simply want to get at the facts—

Mr. ZABRISKIE (interposing). That is all.

Mr. HUSTED. There is not any disposition on my part or upon the part of any member of the committee, in my opinion, to try to put on this situation any different aspect from what it should properly bear.

Mr. ZABRISKIE. Of course not.

Mr. HUSTED. We simply want to get at the truth. Now, you stated in your testimony that the action of the Attorney General, as a matter of fact, established a maximum price of 17 and 18 cents for Louisiana sugar—that was the effect of it. And you say it was a mistake; that such action by the Attorney General was a mistake.

Mr. ZABRISKIE. I felt at that time that the right attitude of the Attorney General was to notify Louisiana producers that profiteering would not be countenanced; that any man that profited in selling sugar would be prosecuted; and the reason we took this attitude was that the crop of Louisiana sugar had been practically offered to us at 15 cents—

Mr. GLASGOW. Well, I do not quite agree with you on that.

Mr. ZABRISKIE. Well, I may be wrong on that. I am subject to some correction.

Mr. HUSTED. Now, why do you characterize this action on the part of the Attorney General as a mistake?

Mr. ZABRISKIE. Well, I felt that there should have been no conference; that there should have been no conference with beet sugar men, or anybody else. But I realized that it might have been forced, because all the people were not letting out their sugar; they were afraid of prosecution if they let out their sugar at 10.5 cents, and it might have been forced. There were many things at that time that had to be handled rather delicately.

Mr. HUSTED. What, in your opinion, was the effect of the action of the Attorney General, in Louisiana, upon the beet-sugar producers in the Northwest, in letting their sugar out on the market at a fair and reasonable price?

Mr. ZABRISKIE. Even before the Attorney General—

Mr. HUSTED (interposing). Well, please answer the question as I stated it. Do you think the action of the Attorney General, in Louisiana, tended to hold back the letting out of the beet sugar crop on the market?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. You do not think it did?

Mr. ZABRISKIE. No, sir. I think it was the price that was obtained by the Louisiana producers that held back the producer of the West.

Mr. HUSTED. Well, do you not think, and do you not know, as a matter of fact, that when the beet-sugar producers of the Northwest learned that the Louisiana people were allowed to sell at 17 and 18 cents, and that they were only allowed to sell at, say, 10.5 cents, the effect of that knowledge was to induce them to hold back their crop and not put it on the market, in the hope that later on they would be able to get a higher price?

Mr. ZABRISKIE. That was the position that we did take; that was the position that we felt was so. But the records of many of these

beet-sugar producers showed that they had sold and shipped out greater quantities at 10 and 10.5 cents, in the same time, than they had in previous years.

Mr. HUSTED. Let me see if I understand you correctly. Subsequent to the action of the Attorney General in Louisiana, do you want us to understand you as stating that there was an increased outlet of beet sugar upon the market?

Mr. ZABRISKIE. I do not know whether it was subsequent or not. But the beet-sugar people did claim that their sales of beet sugar during the months of October, November, and December were greater than in any preceding year—their percentage of shipments as compared to their production.

Mr. HUSTED. Now, do you know whether subsequent to November 8, 1919, when this maximum price was fixed for Louisiana sugar, Cuban sugar was imported and sold in the southern market in competition with Louisiana sugar, and at the same price as Louisiana sugar was authorized to be sold for by the Attorney General?

Mr. ZABRISKIE. At what time was that, Mr. Chairman, again?

Mr. HUSTED. Subsequent to the fixing of this price of 17 and 18 cents by the Attorney General.

Mr. ZABRISKIE. There was no sugar that went to Louisiana until the end of the year, except that which was controlled by the Sugar Equalization Board; that all sold at 9 cents.

Mr. HUSTED. That all sold at 9 cents. Now, after all the Cuban sugar that was controlled by the equalization board was marketed and the new crop came in, did you, as president of the Sugar Equalization Board, get any evidence that Cuban sugar was coming into the Louisiana market and was being sold in competition with Louisiana sugar at this high price authorized by the Attorney General?

Mr. ZABRISKIE. We did not.

Mr. HUSTED. You had no evidence to that effect?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. And you know nothing about that situation, as a matter of fact?

Mr. ZABRISKIE. No.

Mr. HUSTED. There was not anything to prevent it, was there?

Mr. ZABRISKIE. Not after the 1st of January.

Mr. HUSTED. After the 1st of January there was nothing to prevent it?

Mr. ZABRISKIE. Nothing to prevent it. The equalization board had no control of any sugar.

Mr. HUSTED. Is all of this Louisiana crop now sold, do you know?

Mr. ZABRISKIE. It was only 125,000 tons.

Mr. HUSTED. Do you know whether it is all sold now or not?

Mr. ZABRISKIE. I do not.

Mr. HUSTED. Normally, within what periods would that crop be marketed?

Mr. ZABRISKIE. It would be marketed by this time.

Mr. HUSTED. It would all be marketed by this time?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. And then it would normally run to, at least, the 1st of April of the following year—

Mr. ZABRISKIE. Gradually diminishing.

Mr. HUSTED. Gradually diminishing. When did the 1920 Cuban crop come on to the market?

Mr. ZABRISKIE. It began arriving in very slight volume about the middle of December.

Mr. HUSTED. And continued increasingly to arrive?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. Until the present time?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. Do you know how much Cuban sugar has come into the American market since about the 1st of December? Have you any figures on that?

Mr. ZABRISKIE. From the 1st of December to the 1st of January there might have been 25,000 tons. After the 1st of January the equalization board had prepared to liquidate and wind up its affairs, and we kept no data.

Mr. HUSTED. You have no data since the 1st of January?

Mr. ZABRISKIE. That is correct; that is on the new crop.

Mr. HUSTED. On the new crop; you have no data on the new crop since that date?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. And you have not, as a matter of fact, informed yourself about it?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. You are familiar with the activities of the Food Control Board, I assume?

Mr. ZABRISKIE. Somewhat.

Mr. HUSTED. Those activities were closely associated with your activities as president of the Sugar Equalization Board?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. So far as you know, was the action of the Attorney General in this fixing of prices in Louisiana unprecedented?

Mr. ZABRISKIE. Well, I do not like to express an opinion on that. Of course, everything has been unprecedented; everything has been entirely new during the past two years.

Mr. HUSTED. Well, so far as you know, did the Food Control Board permit larger prices of foodstuffs to be charged by groups in any particular section of the country, because they happened to have a short crop in that section?

Mr. ZABRISKIE. I do not think so.

Mr. HUSTED. You do not think they did?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. The Food Control Board required the charging of a uniform price throughout the country, so far as you know?

Mr. ZABRISKIE. No. We never fixed prices; we fixed the margins of profits; and there were freight differentials to be taken into consideration.

Mr. HUSTED. You fixed the margins of profits?

Mr. ZABRISKIE. That is all.

Mr. HUSTED. In Louisiana, at the time the Attorney General concurred in the maximum prices of 17 and 18 cents, crop conditions varied in different sections of the State and on different plantations, did they not?

Mr. ZABRISKIE. They did.

Mr. HUSTED. And the figures furnished by the Department of Agriculture to this board showed that, on some plantations, the sugar yield was only about 20 per cent of the normal crop; in other cases, it ran as high as 80 per cent of the normal crop; in other words, is it not entirely possible that, under a price of 17 and 18 cents, some producers in Louisiana, on poor plantations—on plantations that were peculiarly affected by weather conditions, might have lost money at that price, whereas producers on other plantations which were less unfavorably affected by weather conditions, which were naturally more productive, and which were better organized for production, might have made a very large profit at 17 and 18 cents; in other words, plantations that produced 80 per cent of a normal crop, if allowed to sell at 17 and 18 cents on the plantation, would make a very large profit, would they not?

Mr. ZABRISKIE. That was precisely the position taken by the board. That is why we, had we arranged for the handling of that crop, would have asked the sale of sugar at 13 cents and made up the difference, as the various Louisiana planters showed us that they had profited or not; that is precisely the position that the board took; that gets away from the fixing of a price.

Mr. HUSTED. An arbitrary price to apply to a whole section?

Mr. ZABRISKIE. Yes.

Mr. HUSTED. Where the conditions in different parts of that section were entirely different?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. I think I asked you the question whether, during the war, by the action of the Government, you know whether the prices for any food products except in this particular instance which we are talking about, were fixed to individual producers, or small groups of individual producers, because they had a short crop.

Mr. ZABRISKIE. I do not think so; no.

Mr. HUSTED. You do not think so?

Mr. ZABRISKIE. No.

Mr. HUSTED. So far as you know, it was not done?

Mr. ZABRISKIE. It was not done.

Mr. HUSTED. I think that is all.

Mr. WHALEY. Mr. Zabriskie, is this the only instance where prices were, so to speak, tentatively fixed by the Attorney General, so far as sugar is concerned?

Mr. ZABRISKIE. To my knowledge. Of course, I am not familiar—

Mr. WHALEY (interposing). As a matter of fact, did he not fix the prices of the beet-sugar people in the same way?

Mr. ZABRISKIE. I do not consider that he did.

Mr. WHALEY. Did he not send telegrams to the beet-sugar people?

Mr. ZABRISKIE. To this effect, that any sales of beet sugar at more than 10 cents would be considered subject to investigation.

Mr. WHALEY. Well, what is the difference between that, now, and the Louisiana telegram?

Mr. ZABRISKIE. I could not see any.

Mr. WHALEY. No difference at all?

Mr. ZABRISKIE. No difference at all.

Mr. WHALEY. Therefore, in your opinion, they are both on a parity?

Mr. ZABRISKIE. Both on a parity.

Mr. WHALEY. Now, in regard to the fixing of this price, you stated just now that in no instance had the board fixed any prices during the two years for individual cases.

Mr. ZABRISKIE. Well, that is the Food Administration.

Mr. WHALEY. Now, I wanted to ask you, did you not in all cases fix margins of profits?

Mr. ZABRISKIE. Yes, sir; we did.

Mr. WHALEY. And you mean by margins of profits that you took into consideration, generally, the individual case?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. And allowed a man a fair profit on his production?

Mr. ZABRISKIE. Yes, sir; we did.

Mr. WHALEY. Now, in the Louisiana case, 17 and 18 cents may have been a dead loss, so far as—

Mr. ZABRISKIE (interposing). It may have; yes, sir.

Mr. WHALEY. Have you got any statistics which you could show of instances where a man sold for less than 17 and 18 cents after the Attorney General sent that telegram?

Mr. ZABRISKIE. We have not any statistics at all on that.

Mr. WHALEY. Well, do you know of any instances?

Mr. ZABRISKIE. I do not know of any.

Mr. WHALEY. What was the price of sugar in Louisiana at that time; do you know?

Mr. ZABRISKIE. In Louisiana?

Mr. WHALEY. Yes; at that time, on the open market.

Mr. ZABRISKIE. On the open market it varied all the way from 15 and 16 cents up to 20 cents.

Mr. WHALEY. Up to 20 cents?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. Do you know what the price of Cuban sugar at that time was?

Mr. ZABRISKIE. The price of Cuban sugar ran all the way from 6½ to 11½ cents.

Mr. WHALEY. At that time?

Mr. ZABRISKIE. Yes, sir; that was raw sugar.

Mr. WHALEY. That was raw sugar in Cuba?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. So that you would have to add the freight?

Mr. ZABRISKIE. And the duty.

Mr. WHALEY. And the insurance?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. And the in-between-man's profit, to handle his part of it?

Mr. ZABRISKIE. That is correct; yes.

Mr. WHALEY. Now, if you paid 6½ cents for Cuban sugar, and you added all of these other charges, what would that have amounted to?

Mr. ZABRISKIE. At 6½ cents for Cuban sugar, it would have amounted to about 11 cents.

Mr. WHALEY. About 11 cents. Now, what would the Cuban sugar sell for in this market?

Mr. HUSTED. At what time?

Mr. WHALEY. Well, we are talking about this crop; what did it sell for?

Mr. ZABRISKIE. Six and one-half cent sugar sold up to 13, 14, and 15 cents a pound.

Mr. WHALEY. What I am trying to get at now is—I am trying to get from you as an expert—whether, as a matter of fact—not as a matter of theory, now; I want the facts—it is known what sugar brought at that time, what sugar really did sell for; the Louisiana sugar, I assume, sold for 17 and 18 cents at that time?

Mr. ZABRISKIE. In December.

Mr. WHALEY. Now, what I want to get at is the actual fact of what sugar brought in Cuba and what it sold for in this country at that time. Now, I do not want Mr. Tinkham to be pushing books before the witness. The witness knows a good deal more than Mr. Tinkham about this matter, and I want the witness to be allowed to answer my questions himself, Mr. Chairman. I have confidence in the witness, and I know that he will answer correctly, and I know it will be a fair and impartial answer.

Mr. TINKHAM. I want to make an explanation, Mr. Chairman.

Mr. HUSTED. I think the witness is fully able to protect himself.

Mr. TINKHAM. I think so, too. But I want to make an explanation. Here [indicating] is a tabulation that is lying right in front of the witness; it is a copy of Willett & Gray's Weekly Quotation of Cuban Sugar, and I merely showed it to the witness.

Mr. WHALEY. I do not want my question answered in that way. I want to get Mr. Zabriskie's opinion.

Mr. TINKHAM. You shall have it.

Mr. ZABRISKIE. Now, in what places would you like to have these prices? Where would they obtain?

Mr. WHALEY. I just want to see whether, as a matter of fact, the price of Cuban sugar in this country was materially and actually raised because of the sale of the Louisiana sugar at 17 and 18 cents, which we will assume were the prices that it brought.

Mr. ZABRISKIE. It was not at all, in the Northern States, because during the month of December there was equalization-board sugar in a fair supply, all of which was being sold at 9 cents wholesale. And these other sugars that were coming in cost the refiners all the way from 6½ cents up to, we will say, 9 cents; I do not think any of the 11-cent sugar was available during December; so that sugars were selling at various prices in the North Atlantic States, ranging from 9 cents, wholesale, up to, perhaps, 15 cents, wholesale. Louisiana sugars were selling as high as 20 cents in Washington and Baltimore.

Mr. WHALEY. What I am trying to get at is to figure out for myself, in order to check up the blanket charge, that point about the fixation, so to speak, of the prices of Louisiana sugar, causing an increase in the price of Cuban sugar of 2 cents, or 4, 6, 8, or 10 cents, and thereby causing a loss to the people of the United States of \$900,000,000. Now, that is a question of figures; and what I want to get from you is, whether or not that is true, from the actual prices derived from the sugar; now, what do you think of that?

Mr. ZABRISKIE. I do not think that the fixing of a price, if it was fixed, on 125,000 tons—it certainly would be over now; and yet the price of Cuban sugars to-day, I think, are ruling about 16 cents for raw sugar f. o. b. Havana.

Mr. WHALEY. Now, I will ask you the direct question: Whether, in your opinion, the fixing of prices—and we will assume that they were fixed, for the purpose of this question—of Louisiana sugar lost the American people anything like \$900,000,000?

Mr. ZABRISKIE. Well, I think that the price of Louisiana sugar at that time, and of course, the fact that they were able to get it, might have had some effect upon the ideas of the Cuban producers, and that they were able to get more because of the fact that sugar was scarce; that is natural. It is a situation of supply and demand. But the sugar market went back with the peak of production in January and February and March of this year; it went back to 9 cents a pound for Cuban sugar.

Mr. WHALEY. Does not the Cuban sugar come in competition with the beet sugar?

Mr. ZABRISKIE. Yes, sir; it comes in competition with beet sugar.

Mr. WHALEY. And they are pretty nearly on a parity, so far as—

Mr. ZABRISKIE (interposing). Yes, sir.

Mr. WHALEY. And the Louisiana sugar has always been the highest sugar in the market, has it not?

Mr. ZABRISKIE. It has; it comes at a time of the year before Cubans are available, and when the first rush of beets is over.

Mr. WHALEY. And Louisiana sugar has always been at a prevailing higher price than the other two, has it not?

Mr. ZABRISKIE. I think it has as a rule.

Mr. WHALEY. Now, I understood you to say that the Louisiana sugar was practically out of the market when the other sugar came on; am I correct in that?

Mr. ZABRISKIE. Well, the full force of it.

Mr. WHALEY. The full force of it?

Mr. ZABRISKIE. Yes, sir. There is some Louisiana sugar now, but not very much; it has just gradually decreased.

Mr. WHALEY. And at the time this telegram was sent, I understood you to say that Louisiana sugar was selling in Baltimore at 20½ cents.

Mr. ZABRISKIE. Yes, sir; that is correct.

Mr. WHALEY. Now, Mr. Zabriskie, you made some recommendations to the Committee on Agriculture of the Senate, so far as the powers of the Sugar Equalization Board are concerned. That question has been lugged into this hearing, and I would like for you to state to this committee what recommendations you made, why you made them, and what was the object of those recommendations.

Mr. ZABRISKIE. That refers, now, to the purchase of the crop and the powers of the board?

Mr. WHALEY. Yes.

Mr. ZABRISKIE. We first recommended as a purely business proposition the propriety of purchasing the Cuban crop. Our figures indicated that the world's requirements would be about 18,000,000 tons, and we could only see prospects of 16,000,000 tons. And the crop was tendered to us by the Cuban commission; we recommended the purchase.

Mr. HUSTED. To whom did you make that recommendation?

Mr. ZABRISKIE. We made that recommendation to the President, who was the sole stockholder of the Sugar Equalization Board. It

was a war measure. We were not operating under any act of Congress; and we recommended the purchase of this crop, provided it was in line with the policy; we did not know what the policy of the Government was. There was no pressure.

Mr. HUSTED. It was not your place to fix the policy, was it?

Mr. ZABRISKIE. No, sir; and we made this recommendation early in August; it was practically a forecast upon our part of what was likely to happen, and there was no pressure at that time upon Congress or anywhere else for any legislation. The disposition, as we took it, was for the country to get out of this business and all other business and let the situation go back to normal.

However, when telegrams did begin to pour into Washington, and Congress took notice of the situation—it was on October 3 when Judge Glasgow and I were called down before the McNary committee; and even at that time and for perhaps 30 days later we could have purchased the Cuban crop at approximately $6\frac{1}{2}$ cents per pound; but the McNary bill did not come into play—it was not enacted until the 20th of December.

Mr. WHALEY. Mr. Zabriskie, you submitted to the Committee on Agriculture of the Senate a tentative draft of a bill, did you not?

Mr. ZABRISKIE. Judge Glasgow, I think, can answer all of those questions very much better than I can.

Mr. WHALEY. What I am trying to get from you is—you were the president of the Sugar Equalization Board?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. What I am trying to get at is whether, in your opinion, you had the power under your charter to handle this Cuban crop if you had purchased it? What were the additional powers that you asked for, and why did you ask for them?

Mr. ZABRISKIE. We asked for all the powers of the Food Administration, for the reason that had we purchased the crop and the Lever Act gone out of existence, we would then have had no powers for licensing or control; we would then have had no power to have certain sugars flow into certain districts, and without those powers we felt that we could not render a satisfactory service to the community.

Mr. WHALEY. If you had purchased the sugar?

Mr. ZABRISKIE. If we had purchased the sugar.

Mr. WHALEY. Now, as a matter of fact, at that time, the Food Control Board had gone out of existence, had it not?

Mr. ZABRISKIE. It had been transferred, or was shortly after that, to the Attorney General.

Mr. WHALEY. Well, I say, practically; I mean Mr. Hoover and his crowd had gone out?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. When you purchased the crop in 1918 the Food Control Board issued the licenses, and the object of the licenses was the distribution of the sugar, was it not?

Mr. ZABRISKIE. Absolutely. And not only that, but there was the check on the profiteering, too.

Mr. WHALEY. Well, I say it was for the distribution part of it?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. Now, when you asked for the power to license, you did it for the purpose of distribution of sugar in 1919, in the same way that it was done in 1918, did you not?

Mr. ZABRISKIE. Yes, sir; and that is what we wanted in 1920.

Mr. WHALEY. Well, that is what I meant—the crops of 1919 and 1920. And without that there would have been no benefit at all in purchasing the Cuban crop?

Mr. ZABRISKIE. There would have been no benefit in purchasing the Cuban crop if we had simply purchased the Cuban crop and turned it over to the speculators; they might just as well have purchased it themselves.

Mr. WHALEY. Well, now, the McNary bill denied you these powers, did it not?

Mr. ZABRISKIE. It did.

Mr. WHALEY. You have not got them to-day have you?

Mr. ZABRISKIE. We have not.

Mr. WHALEY. And the object of your appearing before the McNary committee—I mean the Agricultural Committee of the Senate—was for the purpose of getting the very power which you had the year before, through the Food Control Board, in order to distribute the sugar and stop profiteering?

Mr. ZABRISKIE. In other words, if we were to purchase the crop and handle it and control it, we wanted all the powers necessary to do it successfully.

Mr. HUSTED. Let me interrupt just one minute. I want to be sure that the witness understood your question, because it seems to me to be contrary to a statement that he has already made. As I understood the question of the gentleman from South Carolina, he asked you, Mr. Zabriskie, whether the purpose of your appearing before the Senate Committee on Agriculture, was to induce the committee to confer upon your corporation the powers to control the sugar crop.

Mr. ZABRISKIE. No; we did not ask anything of the committee.

Mr. HUSTED. You did not ask anything whatever?

Mr. ZABRISKIE. No; but if we were requested—

Mr. HUSTED (interposing). And the reason you did not ask anything of the committee was because the President of the United States had not authorized the purchase of the Cuban crop?

Mr. ZABRISKIE. Correct.

Mr. HUSTED. And in view of the fact that he had not authorized the purchase of the Cuban crop, those powers would have been of no use to the corporation, and therefore you did not ask for them?

Mr. ZABRISKIE. Well, you could put it that way; but there would not have been any use to purchase the crop if we did not have these powers.

Mr. HUSTED. And as you did not purchase the crop there was not any need—

Mr. WHALEY (interposing). Let us get a little closer to that. You appeared before the Senate committee of the 3d of October.

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. You could have bought the Cuban sugar 30 days after that, could you not?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. And you could have bought it at 6½ cents?

Mr. ZABRISKIE. We could have; it was available.

Mr. WHALEY. And did you not state to the Committee on Agriculture of the Senate that that was the situation at that time?

Mr. ZABRISKIE. We did.

Mr. WHALEY. And you told them that in order to carry out the policy which had been pursued the year before it was necessary to have these additional powers?

Mr. ZABRISKIE. That is correct.

Mr. WHALEY. And the committee of the Senate of the United States was fully informed as to the sugar situation at that time, and your lack of power?

Mr. ZABRISKIE. Very thoroughly.

Mr. WHALEY. And your lack of power to carry out the purchase and distribution, as in the year previous, unless you had the additional powers?

Mr. ZABRISKIE. Absolutely; that is correct.

Mr. WHALEY. There was not a thing kept away from that committee, was there—

Mr. ZABRISKIE. No, sir.

Mr. WHALEY (continuing). So far as the actual sugar situation in the United States at that time is concerned. And if the Senate committee had authorized the purchase of that sugar, and given you the additional power, you could have bought that sugar at the same price that you could have when you recommended it to the President of the United States, could you not?

Mr. ZABRISKIE. Approximately.

Mr. WHALEY. That is all.

Mr. HUSTED. Judge Boies, have you any questions?

Mr. BOIES. There is one point that I want to inquire about: The Louisiana crop, when sold, would be sold to refiners, would it not?

Mr. ZABRISKIE. Not necessarily; there was a great deal of that crop that was sold direct from the plantations.

Mr. BOIES. Refined?

Mr. ZABRISKIE. Refined; what they called the "clarified."

Mr. BOYES. Now, is there any distinctive characteristic of the Louisiana crop whereby it can be identified from all other crops of sugar that come onto the market in this country?

Mr. ZABRISKIE. No; I do not think so.

Mr. BOYES. Then how could the prices be traced into the hands of the wholesaler or the retailer to ascertain whether he was profiteering by a sale of the Louisiana sugar or the other sugar?

Mr. ZABRISKIE. Only by direct investigation and tracing up invoices.

Mr. BOIES. It was practically impossible, was it not?

Mr. ZABRISKIE. Very difficult.

Mr. BOIES. And the effect of placing the Louisiana crop at 17 or 18 cents—or by reason of that, was there not a very much greater quantity of sugar sold in the United States under the name of Louisiana sugar than ever was raised in Louisiana?

Mr. ZABRISKIE. Well, there might have been, but if so we had no record of it.

Mr. BOIES. Well, is that probably not true?

Mr. ZABRISKIE. It might be true. I would not like to say it was not.

Mr. BOIES. It was practicable, was it not?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. I have a few questions to ask you, Mr. Zabriskie. All of them except one refer to your answers to questions propounded by Mr. Whaley. Mr. Whaley was not very definite in fixing the time as to when certain results were apparent; and you stated in answer to one of his questions that the Cuban crop sold at prices ranging from 6½ cents to 11 cents per pound?

Now, I assume from your answers to questions propounded by myself that that covers a comparatively wide-period range. Will you state at what price Cuban sugar sold on the market in Cuba on the 8th day of November, 1919?

Mr. ZABRISKIE. I could not state that offhand. I could make a guess.

Mr. HUSTED. What would be your guess about it?

Mr. ZABRISKIE. I should say about 8 or 8½ cents.

Mr. HUSTED. On the 8th of November. And would you be at all surprised if the statistics of quotations showed that, as a matter of fact, it sold at 6½ cents at that time?

Mr. ZABRISKIE. I would not.

Mr. HUSTED. You would not?

Mr. ZABRISKIE. No; because, as a matter of fact, there were fluctuations, and it was going up and down. The point of my answer here was that we could have purchased it in October as low as 6½ cents, whereas it was offered to us in August—and we could have purchased in August—at the same price.

Mr. HUSTED. At what price, in your opinion, could you have purchased the Cuban crop on the 8th day of November, 1919?

Mr. ZABRISKIE. I do not know. We did not make any effort—that would be entirely problematical.

Mr. HUSTED. How late in 1919—that is, by “how late” I mean the latest date about which you are absolutely certain—could you have purchased the entire Cuban crop at 6½ cents?

Mr. ZABRISKIE. That would be very difficult to answer, Mr. Chairman, very difficult.

Mr. HUSTED. You stated that you could have done so in August.

Mr. ZABRISKIE. Why, of course.

Mr. HUSTED. Could you have done so in September?

Mr. ZABRISKIE. Without question.

Mr. HUSTED. Could you have done so in October?

Mr. ZABRISKIE. Some time in October, I think we could, too.

Mr. HUSTED. You could still have bought it at 6½ cents?

Mr. ZABRISKIE. Yes, sir. And that is based on knowledge that sugar sold, at that time, at that price, in large volume.

Mr. HUSTED. And is it your opinion that you could have bought it for approximately that price on November 8, 1919?

Mr. ZABRISKIE. I rather think I might have.

Mr. HUSTED. Now, could you give us any estimate of the amount of loss to the American consumers because of the failure of the Government to purchase the 1920 Cuban crop?

Mr. ZABRISKIE. I do not know what the market is going to do. This market has been up and down 5 or 6 cents; it is in a panic now.

Mr. HUSTED. You can not give us any estimate at all?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. You do know, however, that it would have amounted to a saving of many millions of dollars?

Mr. ZABRISKIE. Well, if you make a cut off now, Mr. Chairman, and say that the price of sugar is 20 cents a pound, say, as against the possibility of its being only 11½ or 12 cents a pound at the outside, retail, why it is a very simple matter of mathematics.

Mr. HUSTED. And that would show a loss to the American consumers of many millions of dollars, would it not?

Mr. ZABRISKIE. That would figure in that way.

Mr. HUSTED. Well, is that not a fair way to figure it?

Mr. ZABRISKIE. It is.

Mr. HUSTED. Of course, the low prices at which you stated the sugar was sold in the Northern States and in the Eastern States, at the time that Louisiana sugar was selling at this high price, were caused entirely because at that time sugar was under the control of the equalization board; is that not correct?

Mr. ZABRISKIE. All of the old crop of Cuban.

Mr. HUSTED. All of the old crop. And no other crop was coming in, except the Louisiana crop and the beet-sugar crop?

Mr. ZABRISKIE. During December there was a little Cuban coming in here, but we had no control.

Mr. HUSTED. That was not enough to affect the market substantially, was it?

Mr. ZABRISKIE. No.

Mr. HUSTED. So that the low prices which Mr. Whaley attempted to offer as evidence of the fact that the prices of sugar to the American consumers generally were not affected by the Louisiana prices, were entirely the result of the Government control and the ability of the Government to allow the American consumer to buy that sugar practically at any price it fixed, were they not?

Mr. ZABRISKIE. Well, beet sugar was selling at 11 and 11½ cents at that time, too.

Mr. HUSTED. Yes; but the effects of the price of Louisiana sugar did not affect at all the price of any sugar which had been purchased by the Sugar Equalization Board, and which was controlled by it?

Mr. ZABRISKIE. Not at all.

Mr. HUSTED. And that was not according to the ordinary laws of supply and demand, but was arbitrarily fixed by the Government, with a view to permitting the American consumers to purchase the sugar as cheaply as was possible, based upon the actual price paid by the Government, and such cost as the Government might have been put to in connection with the control and disposition of the sugar purchase?

Mr. ZABRISKIE. That is correct, Mr. Chairman.

Mr. HUSTED. I think you stated that on the 8th day of November, 1919, when the Attorney General fixed the price of 17 and 18 cents for Louisiana sugar, there was some fluctuation in the sugar market in Louisiana; in other words, that all of the sugar was not being

sold at this top price of 21 cents, or 22 cents, referred to in the communications between the United States district attorney and the Attorney General, but that some of it was selling as low as 15 cents? I think you stated that—or am I incorrect about that? That is, that the market price ranged up to 21 cents?

Mr. ZABRISKIE. I think it did.

Mr. HUSTED. In other words, that some sugar was being sold on the market in Louisiana at a lower price—I will not say how much—than the price fixed by the Attorney General?

Mr. ZABRISKIE. And you ought to bear in mind also——

Mr. HUSTED (interposing). I want to be quite fair about this.

Mr. ZABRISKIE. And you want also to bear in mind that there was some of the equalization board's sugar being sold in Louisiana at that time at 9 cents; so that there was a wide difference of prices.

Mr. HUSTED. A wide variation?

Mr. ZABRISKIE. Yes; and the scarcity of sugar made possible a price that altogether depended upon the needs of the business of the purchaser, etc.

Mr. HUSTED. The price at which sugar was sold in Louisiana at that time in the open market was not based altogether on the cost of production, was it?

Mr. ZABRISKIE. Well, I have no way of knowing.

Mr. HUSTED. You have not any reason, particularly, for thinking that it was?

Mr. ZABRISKIE. Not one way or the other.

Mr. HUSTED. It was sold on the open market under the law of supply and demand?

Mr. ZABRISKIE. Absolutely.

Mr. HUSTED. There was a great scarcity of sugar and they could get almost any price they named at that time?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. And the price at which it was sold on the open market would not necessarily have any direct relation to the cost of the production of the sugar, would it?

Mr. ZABRISKIE. It would not need to.

Mr. HUSTED. It would not need to?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. That is all.

Mr. TINKHAM. Mr. Chairman, there is one point that I wish to have clarified, and that is the point in relation to the appearance of Mr. Zabriskie before the Senate committee. I wish that the chairman would ask Mr. Zabriskie one or two questions along this line:

If it was not a fact that the equalization board only came before the Senate committee because the committee asked it to come; or whether the equalization board—or Mr. Zabriskie—did not come before the committee until they were asked to come; that when they were asked to come, they came, and that he, Mr. Zabriskie, was there, and that Judge Glasgow was there.

Then I would like the chairman to ask——

Mr. WHALEY (interposing). What has that got to do with the case? If they appeared before the Senate committee and testified, it makes no difference how they got there.

Mr. TINKHAM. Please wait one moment, and allow me to finish. If the chairman does not think these questions are competent, very well.

Then, when Mr. Zabriskie was there, and the equalization board was represented, if they did not take the attitude that they were not recommending anything to Congress, but that if Congress was going to pass the Ade act they wanted certain powers, in accordance with their suggestions to the President.

In other words, Mr. Chairman, I want the fact brought out that the equalization board made no recommendation of its own motion to the committee, but said to the committee that, if the committee was going to act to pass a bill they thought it should give them such legislation as they recommended, provided it was decided as they had recommended to the President, that the Cuban crop should be purchased.

Mr. HUSTED. Well, I think that has been pretty well covered. I will ask the witness if I correctly understand the situation; as I understand it, it is about as follows:

The Sugar Equalization Board considered it desirable from a national standpoint to purchase the Cuban crop?

Mr. ZABRISKIE. From a purely commercial standpoint.

Mr. HUSTED. From a national commercial standpoint; from the standpoint of price to the American consumer?

Mr. ZABRISKIE. Yes, sir.

Mr. HUSTED. And made a recommendation to the President of the United States to that effect? The President of the United States as the sole stockholder of the corporation, declined to act upon that suggestion. The board felt that the policy of the Government in respect to the purchase of sugar was a policy which should be laid down by the Executive, and not by the Sugar Equalization Board. After the President declined to act upon the suggestion the Sugar Equalization Board realized that its activities, its beneficial activities, had practically terminated with the control and disposition of the 1919 crop, which it had already purchased; therefore, it had no particular suggestion to make.

But when the Senate Committee on Agriculture called the witness, who is now before us, to appear before that committee, the witness stated that, if they were to continue, why, then, certain legislation would be necessary; but that they had made no recommendation that such legislation be enacted?

Mr. TINKHAM. Unless the crop was purchased.

Mr. HUSTED. That they made no recommendation that such legislation be enacted; that there was not any need of such legislation unless the crop was purchased; they did not feel that they should purchase the crop without the authorization of the President of the United States. Is that a thoroughly correct statement, Mr. Zabriskie?

Mr. ZABRISKIE. Well, I think you mean it to be, Mr. Chairman, and I—

The CHAIRMAN (interposing). Well, is it? If it is not, I want it corrected.

Mr. WHALEY. Let him state what it is, Mr. Chairman.

Mr. ZABRISKIE. It is not entirely, Mr. Chairman. We were invited down here by Senator McNary and his committee.

Mr. HUSTED. Yes.

Mr. ZABRISKIE. We had no suggestion to make to that committee. We had no bill to offer. We had stated our position clearly to the Executive. The policy of the Government was not within our province; and we only asked the Senate committee that if such legislation was to be passed to purchase the crop that we be provided with powers to handle the question in the best interests of the American people, and that would be with proper control.

Mr. HUSTED. Now, how does that differ from the situation as I stated it?

Mr. ZABRISKIE. Perhaps it does not.

Mr. HUSTED. You did not need any new legislation, did you, to authorize you to purchase the crop?

Mr. ZABRISKIE. No; we could have purchased the crop.

Mr. HUSTED. Existing legislation would enable you to purchase the crop?

Mr. ZABRISKIE. With the acquiescence of the chief stockholder.

Mr. HUSTED. But you declined to purchase the crop through the failure to secure that acquiescence on the part of the Chief Executive?

Mr. ZABRISKIE. No; with the acquiescence of the President would have to come proper authority from the Congress to properly control and handle it; if we just purchased—

Mr. HUSTED (interposing). Pardon me. But failing that acquiescence, what justification would there have been, then, for additional legislation? In other words, would not the passing of the legislation be the doing of a useless thing, failing the acquiescence of the Executive in the chief thing, the purchase of the crop? That was the very purpose for which you wanted the legislation, was it not? Is that not correct? Did I put the question in an unfair way?

Mr. ZABRISKIE. Well, I guess—

Mr. BOIES (interposing). Let us have your answer, please.

Mr. HUSTED. You did not answer the question, Mr. Zabriskie.

Mr. ZABRISKIE. What is the question?

Mr. HUSTED. Let the stenographer read the question.

(The stenographer read the last preceding question of Mr. Husted.)

Mr. ZABRISKIE. Mr. Chairman, I will put it this way: That there would have been no use in purchasing the crop if we did not have proper legislation to control its distribution, and there would not have been any use in the legislation if we did not purchase the crop.

Mr. HUSTED. But you did not intend to purchase the crop, did you, unless you secured the acquiescence of the Chief Executive?

Mr. ZABRISKIE. No; we did not.

Mr. SUMNERS. You did not intend to purchase it unless you got the legislation?

Mr. ZABRISKIE. I do not know whether Congress could have directed us to do that; you know better as to that.

Mr. BOIES. If you had secured the acquiescence of the President, then you would have insisted upon the legislation, would you not?

Mr. GLASGOW. If I may interpose, as I was on that board——

Mr. WHALEY (interposing). Let me interrupt you one minute. Mr. Zabriskie, under your charter and the powers given you in the congressional act, is there anything there that requires you to get the acquiescence of the President to purchase, or was it not merely the gracious act of your board to submit to the acquiescence of the President because of the fact that it would put the Government in the position of a policy of Government ownership by a Government distribution of an article?

Mr. ZABRISKIE. Absolutely.

Mr. WHALEY. And also you have to get the money from the Executive to buy the article?

Mr. ZABRISKIE. That is another thing.

Mr. WHALEY. Your \$5,000,000 capital stock would not have bought the Cuban sugar crop, would it?

Mr. ZABRISKIE. It would not.

Mr. WHALEY. And the reason you submitted the matter to the President was because of the fact that you did not want to commit this Government to Government ownership in a commodity without the sanction of the Chief Executive?

Mr. ZABRISKIE. We did not; and we realized that this was a war measure pure and simple. The war was over. It was not calculated when we started business to continue the control of sugar into peace times; and our recommendation to the President was purely as we saw it, the right commercial thing to do, as business men, in the interest of the people of the United States.

Mr. WHALEY. Now, Mr. Zabriskie, do you not know that—stripping this thing of the side issues and getting down to the actual facts—it is necessary to have the consent of Congress?

Mr. ZABRISKIE. Absolutely.

Mr. WHALEY. To commit this country to Government ownership of any article of any kind?

Mr. ZABRISKIE. I think so.

Mr. WHALEY. And when you appeared before that committee you so stated to them?

Mr. ZABRISKIE. We did.

Mr. WHALEY. That it was a question for this Congress to decide, as to whether it was necessary for this Government to go into the handling of any article of commerce during peace times?

Mr. ZABRISKIE. I did; yes, sir.

Mr. SUMNERS. Mr. Zabriskie, as I understand you, you required two conditions before you would have felt safe in proceeding to purchase this crop—one was the Executive approval and the other was legislative approval?

Mr. HUSTED. Not for the purchase.

Mr. SUMNERS. Wait a minute; let the witness answer. I am not asking the chairman the question. Now, let us start that over again: You were the president of the board, and what you had in consideration was not buying the crop unless you could get rid of it to the American people; that was your only object in buying it, was it not?

Mr. ZABRISKIE. That was all.

Mr. SUMNERS. You did not want to buy it without the right of distributing it?

Mr. ZABRISKIE. There was no use in purchasing it without getting it to the consumer at the prices——

Mr. SUMNERS (interposing). No; you did not want to keep it in warehouses?

Mr. ZABRISKIE. No; nor did we want to give it to speculators.

Mr. SUMNERS. And so you went to the Executive and you went to Congress; and you laid the situation before the Executive and before Congress; and both the Executive and the Congress failed to give you what you wanted before you tackled the job of buying the sugar crop; is that correct?

Mr. ZABRISKIE. That is right.

Mr. SUMNERS. Now, Mr. Zabriskie, you stated that we had reached the time of peace; that we are no longer at war. But as a business proposition, you thought this was a good bargain. But whether or not the Government should continue to exercise in peace times war powers was a thing that you did not want to pass on; that was your mental situation, was it not?

Mr. ZABRISKIE. Exactly.

Mr. SUMNERS. Now, then, the sugar crop was about 160,000,000, and you required about 200,000,000 for general use; is that correct?

Mr. ZABRISKIE. What was that?

Mr. SUMNERS. The sugar crop, you concluded, was about 160,000,000 pounds.

Mr. ZABRISKIE. The production of sugar in the world?

Mr. SUMNERS. Yes.

Mr. ZABRISKIE. The production of sugar in the world was about 18,000,000 tons—that is, those were the requirements—and the production was about 16,000,000 tons.

Mr. SUMNERS. Eighteen million tons, and production about 16,000,000. Now, at the time this action was taken by the Attorney General sugar was selling in Louisiana from 15 to 21 cents. If the Attorney General had left that situation to individual prosecutions, which would have required investigation probably by the grand jury, the case would have been set down for trial, and after a while there would have been a trial. With that sugar crop selling at from 15 to 21 cents at that time, was there anything in the market indicating it might go higher when the Attorney General put a stop to the advance?

Mr. ZABRISKIE. It was selling higher.

Mr. SUMNERS. You could not state where it would go?

Mr. ZABRISKIE. At that time it was possible to get almost any price for sugar.

Mr. SUMNERS. Now, then, if the Cuban, who was not under the control of this Government from any sort of an angle, had seen that the American crop was going up—was already selling at from 15 to 21 cents and was going up—would that have had a psychological effect on him with regard to the price he would ask for his crop?

Mr. ZABRISKIE. I think so. I think that is all there is to it.

Mr. SUMNERS. The psychological effect. Don't you think the psychological effect of sugar bringing 21 cents and going up would have had a greater psychological effect than the action on the part of the Attorney General preventing it going above 17 cents?

Mr. ZABRISKIE. It would. These are all opinions, of course.

Mr. SUMNERS. I understand that; we all have opinions. Now, then, the fact of it was, if we get away from the proposition of the failure of the Federal Government to buy the Cuban crop and confront the situation that the Attorney General was confronted with at the time he entered into these negotiations, the probable effect upon the mind of the sugar owners of the fixing of a price of 17 cents as against the price brought in the open market would not stimulate the price of sugar?

Mr. ZABRISKIE. I think I have testified to that.

Mr. SUMNERS. At the time the Cuban crop was offered to the Government there were a good many other necessities which the people required, as is disclosed by subsequent developments, at prices which would have been a good buy, or a good many of them would have been?

Mr. ZABRISKIE. Yes, sir.

Mr. SUMNERS. So, after all, it was just a question as to when this Government was going to quit buying stuff and go out of business?

Mr. ZABRISKIE. That is precisely what the board felt.

Mr. SUMNERS. At some time you had to quit?

Mr. ZABRISKIE. At some time we had to go out of business.

Mr. SUMNERS. Now, then, with a 2,000,000-ton shortage, as a matter of public policy which price would be most calculated to get us back to a normal basis and normal supply, a sufficient supply for the world—the price which would cut the Cuban sugar down to 6½ cents and possibly either to hold the Louisiana cane man down or to subject him to prosecution, or to let him get a pretty good price and stimulate the increase in production and get the thing over? Which one would be most calculated to get us finally on the basis where the Government could go out of business?

Mr. ZABRISKIE. I do not think there was any difference of opinion in the minds of any of the members of the board on that. High prices have a way of curing themselves and they do two things; they curtail consumption on the one hand and stimulate production on the other hand.

Mr. SUMNERS. It is a dose of medicine the world finally has to take somewhere down the line?

Mr. ZABRISKIE. And at some time this Government had to withdraw from the control of sugar, or wheat, or anything else.

Mr. SUMNERS. Now, then, as I understood you to say in reply to a question asked you by the chairman of the committee, in the fixing of prices, fixing the profits, and having got that control, that the Government did not take into consideration specific communities where they had had bad fortune in production, but that you did take general averages in dealing with those situations. I do not think I misunderstood the chairman's question or your reply.

Mr. ZABRISKIE. The Food Administration took into consideration individual situations. It would have to.

Mr. SUMNERS. I do not know whether you understood the chairman or not. I understood the chairman to ask you if in the activities of the Government they had taken into consideration areas of unfavorable production. Am I correct, Mr. Chairman, in stating that you asked that?

Mr. HUSTED. I do not think the question as stated by the gentleman from Texas carries out my idea at all. I think that the witness testified that the Food Administration considered only the margin of profit to the individual.

Mr. ZABRISKIE. That is all.

Mr. HUSTED. Merely margins of profit to the individual?

Mr. ZABRISKIE. That is all.

Mr. HUSTED. They did not establish prices for groups or for sections?

Mr. ZABRISKIE. That is right.

Mr. HUSTED. And this is the only case where prices were established for groups or sections of the country instead of being fixed on the margin of profit over and above cost of production to the individual?

Mr. SUMNERS. Now, right in that connection: You fixed the margin of profit—you fixed the outside limits of profit—did you not?

Mr. ZABRISKIE. We, in the Food Administration, fixed, as the general thing, a range. On flour, with which I was familiar at the time, the wholesale grocers' range of profit was from 50 to 75 cents per barrel.

Mr. SUMNERS. In that case you fixed the price of wheat, did you not—the Government fixed the price of wheat?

Mr. ZABRISKIE. The Government fixed the price of wheat.

Mr. SUMNERS. I am talking now about the general policy of the Government.

Mr. ZABRISKIE. The Government fixed the price of wheat.

Mr. SUMNERS. And the farmer who had a good yield made more than the man who had a bad yield?

Mr. ZABRISKIE. He did. The price of wheat was fixed—

Mr. SUMNERS. The Government, in fixing the price of wheat, so far as you know, did not find it practicable to go in and fix the price that each individual farmer would be able to get on the basis of the margin of profit on the individual farm, did it?

Mr. ZABRISKIE. No; it did not.

Mr. SUMNERS. As a matter of fact, as a business man dealing with those practical propositions, when you start from production—I am not talking about manufacturers, or the overturn charge—when you start with production, it would be administratively impossible to go into what any individual farmer or all individual farmers throughout the country make on a product that comes from their individual farms? Would not that be a fool and nonsensical thing?

Mr. HUSTED. That was the proposition that was suggested.

Mr. ZABRISKIE. Of course, the Food Administration did not handle their business that came to them in exactly that way.

Mr. SUMNERS. As a practical man undertaking to deal with the Louisiana sugar situation, where you have a great many farmers, and may be some of them have 25 acres in cane and may be some of them have got 2,000 acres in cane, produced under all sorts of conditions, do you not think about the best thing to do in a situation like that would be to go in there and make such inquiry as you would be able to make, to get such evidence as you would be able to get from every source and then, when you had it, to determine somewhere about what would be the average price for those folks to get and

say, "Now, this looks to me like the average thing to do; I am sorry to have the responsibility of enforcing the law. I have made this investigation and, from the best information I can get, a price under 17 cents would not subject you to inquiry. But if you folks are going to sell this stuff now, with this market showing a disposition to run wild, if you are going to sell above 17 cents, you will have to face a grand jury." Administratively speaking, is not that about the only right you have?

Mr. ZABRISKIE. We felt, of course, the establishment of any price was a mistake. But then that is subject to any man's opinion.

Mr. SUMNERS. I suppose that would not be just quite a fair question to ask under the circumstances. You stated that you purpose, under the circumstances, was to pay more for the Louisiana crop than for the other crops and to make the price of the Cuban crop absorb the difference.

Mr. ZABRISKIE. As a matter of equity. We did not think that many of those Louisiana planters could profiteer if they sold at 17 or 18 or 19 cents. They had a short crop; they did not have much more than 50 per cent of the crop of the preceding year, and it was the desire, if we continued in business, to handle those Louisiana planters on an entirely different basis; to have them sell their sugar at 11 cents a pound, and we would step in and absorb anything that might show them a loss.

Mr. SUMNERS. From the standpoint of public policy, under all the circumstances, considering the Cuban situation and the fact that in a given prosecution you would have had to show profiteering, you believe the public policy of this country was best served by stopping that price at 17 cents or letting it run wild?

Mr. ZABRISKIE. We thought at the time—I thought at the time, individually, that it was a mistake to put any fixed price on sugar.

Mr. WHALEY. Mr. Zabriskie, when you say that you would buy the Louisiana sugar at 11 cents and absorb the difference——

Mr. ZABRISKIE. No; I meant if they sold it at 11 cents.

Mr. WHALEY. If they sold it to you at 11 cents——

Mr. ZABRISKIE. No; sold it to their consumers at 11 cents.

Mr. WHALEY. And you would absorb the difference?

Mr. ZABRISKIE. Yes, sir.

Mr. WHALEY. You meant you would pay the difference between 11 cents and what it actually cost to produce it?

Mr. ZABRISKIE. Yes; and a fair margin of profit.

Mr. WHALEY. And a fair margin of profit, whether 17, 18, or 19, or 20 cents, or whatever it was.

Mr. ZABRISKIE. We put a limit on it of 15 cents.

Mr. HUSTED. And you would absorb the difference between 11 cents and 15 cents?

Mr. ZABRISKIE. No; we did not put a limit on it. The judge wants me to bring out we did not come to an agreement on that 15-cent price, but that was the basis on which we discussed it; that was the overcharge.

Mr. HUSTED. Now, Mr. Zabriskie, profiteering under the Lever Act is purely an individual question, is it not?

Mr. ZABRISKIE. That is the way we viewed it; yes, sir.

Mr. HUSTED. Not in any sense a group question?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. There could not be any question of opinion about that, could there?

Mr. ZABRISKIE. There could not.

Mr. HUSTED. That is the clear language of the statute?

Mr. ZABRISKIE. It is.

Mr. HUSTED. I think you stated, and I think you stated inadvertently—I assume you did—but you did state in reply to one of Mr. Whaley's questions that after you ceased to function as an equalization board, purchasing and controlling sugar, that the food control was transferred to the Attorney General and not to the Food Controller. Of course you realize that the Attorney General had no power whatever to control food, do you not, and the price of food? In other words, he was limited, was he not, to bringing actions in profiteering, in individual cases?

Mr. ZABRISKIE. Yes, sir; that is what I think.

Mr. HUSTED. You understand that clearly, do you not?

Mr. ZABRISKIE. I do.

Mr. HUSTED. That his limitations were absolutely the prosecution of profiteering in individual cases.

Mr. ZABRISKIE. That is why we thought the fixing of any 17-cent price was a mistake.

Mr. HUSTED. Not only a mistake, but an unauthorized act under the law.

Mr. ZABRISKIE. We did not go that far.

Mr. HUSTED. You did not go into that?

Mr. ZABRISKIE. No, sir.

Mr. BOIES. Right on that question—you may have answered it, but if you did I have forgotten: At what time did you apply to the President for his indorsement of the purchase of this sugar?

Mr. ZABRISKIE. On the 14th day of August. With our letter to the President—

Mr. BOIES. What was his reply?

Mr. ZABRISKIE. He simply acknowledged the receipt of our letter.

Mr. BOIES. Without saying anything?

Mr. ZABRISKIE. Without saying anything.

Mr. BOIES. He never answered it in the negative or the affirmative?

Mr. ZABRISKIE. Perhaps you would like to know that on the 14th day of August, when we wrote to the President recommending this purchase, we inclosed with that letter the offer of the Cuban commission. About two weeks or so later, failing to hear from the President, we wrote him again, saying we did not want to add to his burdens, but it was very necessary to get a reply, as we very much feared that the offer would be withdrawn. After a matter of another two weeks he acknowledged the receipt of that and said he was taking it into consideration. And about two weeks later than that the offer was withdrawn and we notified the refiners themselves in the interest of the American consumers to go ahead and purchase sugar in the best way they could, as in prewar times.

Mr. BOIES. You really never received any reply from the President?

Mr. ZABRISKIE. At that time he was starting on his Western trip and did not have a unanimity of opinion, I believe, on the part of

his advisers. One of the equalization board members did not think it was right.

Mr. BOIES. You say you never received any reply?

Mr. ZABRISKIE. No, sir.

Mr. BOIES. Then did you thereafter go before a committee and make suggestions with reference to any additions to the law?

Mr. ZABRISKIE. No. We were invited down on the 3d of October before the McNary committee.

Mr. BOIES. Did you state there that inasmuch as the President had not replied to your request to buy this, that you would not proceed, and therefore no new legislation would be necessary or required?

Mr. ZABRISKIE. We did not come down with any view of proposing any legislation. We figured that it was a war measure and we would proceed then to liquidate.

Mr. BOIES. You concluded, then, it was a closed incident?

Mr. ZABRISKIE. Yes, sir.

Mr. BOIES. When you failed to receive any word from the President?

Mr. ZABRISKIE. Yes, sir.

Mr. BOIES. Your idea of allowing the Louisiana planter to sell his crop for about 11 cents and you to make up the difference to 15 cents, was you were putting all those planters on a level without regard to the actual gain or loss to any individual?

Mr. ZABRISKIE. That was all problematical and all subject to our being requested to go ahead and buy this next crop of sugar.

Mr. BOIES. Did you investigate any district in the United States in order to determine the level that should be reached as between producers?

Mr. ZABRISKIE. We had estimates from all parts of the country. We would have gone through the same process as we did previously, estimating the costs of the beet-sugar men, etc.

Mr. BOIES. In different districts?

Mr. ZABRISKIE. Yes, sir.

Mr. BOIES. But you did not do it?

Mr. ZABRISKIE. No, sir.

Mr. HUSTED. If that is all we will ask Mr. McCann to take the stand.

Mr. TINKHAM. My only other witness—that is, the only other witness whom I have asked to come here—is Mr. McCann. He is a writer of the New York Globe.

Mr. GLASGOW. I was with Mr. Zabriskie in connection with this and I would like to make a short statement in connection with him.

Mr. HUSTED. How long will your statement take?

Mr. GLASGOW. Part of my testimony before this McNary committee was read by Mr. Tinkham, and the part he read does not quite give the situation as it existed.

Mr. HUSTED. And you want to explain the situation as it actually did exist?

Mr. GLASGOW. I do, sir.

TESTIMONY OF HON. WILLIAM A. GLASGOW, PHILADELPHIA, PA.

(The witness was duly sworn by Mr. Husted.)

Mr. GLASGOW. Mr. Chairman, I was a member of the Sugar Equalization Board from its organization and while Mr. George M. Rolf was the president of it and subsequently Mr. Zabriskie. And I want to put in the record consecutively just how this question arose as to the crop of Cuban sugar for 1920.

In August, 1914, Mr. Hoover, theretofore having from Paris cabled the President on the subject of the sugar shortage in the world and the desirability, from his point of view, of considering the purchase of the Cuban crop for another year, and nothing having been done about it, the Sugar Equalization Board met on the 14th day of August and unanimously, with one exception, prepared a memorandum to the President setting forth fully, as far as their information went, exactly the condition as far as the sugar industry was concerned and the prospects of supplying the United States with sugar at a reasonable price during the year 1920, and recommending to the President, who held the stock of this board for the United States, that for the year 1920 the crop be bought as a commercial proposition, apart from a question of policy—that the crop for 1920 in Cuba be bought just as it was bought the year before.

We did not put any price in that recommendation, but Mr. Zabriskie had information that the price would not exceed $6\frac{1}{2}$ cents. It was a matter of negotiation which the Cuban commission presented to us in the letter which we transmitted to the President.

We heard nothing from that except an acknowledgment of it. On the 23d of September, I think it was, or probably earlier, the board felt that the Cuban commission was getting somewhat restless over the situation, and, therefore, a further communication was sent to the President asking for as early a reply as convenient with regard to the proposition. In that recommendation we specifically recommended the purchase of the Cuban crop. We specifically stated that if it was to be purchased, legislation was necessary, and that was necessary because if we purchased the crop at $6\frac{1}{2}$ cents we must have the power to translate that price to the American public without intervening excess profits taken off by the middlemen, and to preserve to the American people the benefit of the purchase it was necessary for us to have certain powers which we had theretofore exercised. Nothing was heard from the President upon it, and upon the 3d of October Mr. Zabriskie and myself were requested by Senator McNary's subcommittee of the Senate committee to appear here.

Mr. HUSTED. Now, just one minute, if I may interpose—

Mr. GLASGOW. It does not trouble me at all.

Mr. HUSTED. Had you or Mr. Zabriskie, so far as you know, or any member of the Sugar Equalization Board, brought this situation to the attention of Congress or any committee of Congress prior to your being summoned there?

Mr. GLASGOW. Not that I know of, sir. I certainly had not and Mr. Zabriskie had not. The situation, Mr. Chairman, that the board recognized in its meeting, in discussing this situation, was that there was but one way of protecting the American people from excess prices on sugar for 1920; that it could only be done by the purchase

of the Cuban crop; that it could not be done by any prosecutions as to profiteering or any other method; and that was the incentive that led us to make the recommendation.

Mr. HUSTED. That was the only practicable method?

Mr. GLASGOW. The only method. I do not qualify it in any way. It was the only method. And it has been demonstrated that we were correct in that proposition, in my judgment. Then Senator McNary invited Mr. Zabriskie and myself to come here. We presented at that first meeting a memorandum which had been authorized by the board, which was its recommendation, that the crop be purchased. We took the position that it was a question of policy. First we had presented it to the President and he had not acted upon it and it was now, when we were before that committee, a question of the policy of Congress on the subject and that we were not there urging Congress; nor had we urged the President on the question of policy, but we presented what was our recommendation as to the necessities of the situation. And the board—I believe Mr. Zabriskie agrees with me—was prepared to carry out the policy that was directed either by the President with the approval of Congress by legislation, or if it was directed by Congress without prior recommendation of the President or suggestion of the President. If it was the President's direction or policy, we had to have Congress's action approving it or we could not do it; if it was Congress's action upon the policy, we did not have to have the President's approval further than the signing of the act which Congress might pass.

We presented it fully and presented this view to the committee that we were not there pressing for legislation upon this question of policy; we were not there trying to lobby through a bill to continue our efforts in their behalf; but if Congress desired to adopt, as a policy, the purchase of that sugar, then we said to them our only request is that you give us such legislation as will enable us to carry it out. That is the position we took.

Mr. HUSTED. Is not that exactly as stated by Mr. Zabriskie?

Mr. GLASGOW. Not quite, sir.

Mr. HUSTED. It seems to me that is exactly the statement of Mr. Zabriskie.

Mr. GLASGOW. Not quite. We were not there pressing for legislation, not there asking for legislation; but we were there ready to carry out the policy which Congress might adopt regarding it.

Mr. HUSTED. Oh, certainly.

Mr. GLASGOW. Certainly; of course. But that has not been brought out that was the fact. Then Senator McNary telegraphed me at my office and asked me to prepare a bill granting to the board all powers that were necessary. I prepared that bill and I prepared it giving to that board all the powers I thought it was possibly necessary for them to adopt. When it got down here that bill was not satisfactory because it met the objection that it went too far.

There were two questions, two elements before Senator McNary's committee, holding back the passing or recommendation of any bill carrying out this matter. One was from the beet territory. One of the Senators came there and made a long argument against any license system at all. The other was from the Louisiana people who came before that committee and showed them, as far as Mr. Zabriskie

and I could see, that there was no possible price in view that they could get for their sugar that would bring them out on a even basis, by reason of the blight of their crop, practically—practically a third to a half of a crop. And then the suggestion came from me, with Mr. Zabriskie, that we would buy the 125,000 tons of the Louisiana crop and sell it back to the American people at a loss, which we could take up from what we had already accumulated, in order to get that element out of the market; in order to get the effect of the price, which it was necessary for them to have in order to come out even, away from the Cuban crop. In other words, that 125,000 tons of Louisiana sugar should not fix the price on three millions of sugar from Cuba.

The situation, Mr. Chairman, was such that the real thing that fixed the price of Cuban sugar or had its effect on the price of the Cuban sugar was the fact there was a shortage and the fact that the Louisianian could get from 15 to 20 cents for his sugar if he wanted it. It was not the fact, as far as I can see, that any agreement was made with them or any telegram sent to Louisiana "That we won't prosecute you if you don't charge more than 17 cents." Because if that had not been sent, and the Louisiana crop had all gone wild at from 15 to 20 and 21 cents, that would have had an effect on the Cuban crop much more than the 17 cents which was finally arranged with them. That was the situation.

What brought up the Cuban market—what disarranged the Cuban market—was the condition in the United States, of the demand for sugar, the fact that Louisiana could get for its sugar almost anything it asked from 15 to 21 cents, and that had a disturbing effect on the market which put it up. And that is the situation up to the time that the Louisiana market practically ended. That is the situation just as it stands. It was the condition under which Louisiana could get from 15 to 21 cents for its sugar, which had the effect in Cuba of producing the increased price of the Cuban raw sugar.

Mr. HUSTED. That is your opinion?

Mr. GLASGOW. It is a fact.

Mr. HUSTED. You state that the Louisiana market had gone wild?

Mr. GLASGOW. Yes, sir.

Mr. HUSTED. And if the Louisiana market had risen to a price above 17 or 18 cents that that would have stimulated the Cuban market more than the price of 17 and 18 cents which the Attorney General concurred in?

Mr. GLASGOW. I did not say stimulate it more; I said the fact that the Louisianian could get from 15 to 21 cents, and which price, according to their claim, was not an exorbitant price compared with what it cost them, and the short crop—that fact that they could get from 15 to 21 cents, the fact that the Cubans knew they could, and that they would not have to meet any lower price from Louisiana, is what disarranged the Cuban market and put up the price of raw sugars in Cuba.

Mr. HUSTED. If the Attorney General had not fixed the price of 17 and 18 cents and the price in Louisiana had risen to outrageous figures, the Attorney General could have prosecuted them for profiteering, could he not?

Mr. GLASGOW. Mr. Chairman, the way I answer that—I think the man who is the prosecuting officer has to have some intelligence, and

if any man could have heard the statements before the McNary committee and the gentlemen from Louisiana as to their condition in their crop it seems to me he ought to exercise some discretion or judgment as to whether he could succeed in a prosecution for profiteering. And if what they told the McNary committee, from Louisiana, was true—and I have every reason to believe it was—why, Mr. Zabriskie, I remember, stated before the McNary committee he reached the conclusion there was no price the Louisianan could get for his sugar which would be considered profiteering, on account of the climatic conditions, which had almost destroyed the crop.

Mr. HUSTED. That is a matter of fact for a jury to determine, of course?

Mr. GLASGOW. Yes, sir.

Mr. HUSTED. But it has already been testified here by Mr. Zabriskie that the conditions in Louisiana varied very greatly; that in some portions of Louisiana they might have made a very high profit at the price allowed by the Attorney General.

Mr. GLASGOW. Yes, sir.

Mr. HUSTED. Whereas in other districts of Louisiana they might not have made any profit at all.

Mr. GLASGOW. Yes.

Mr. HUSTED. Or might even have sold their sugar at a loss.

Mr. GLASGOW. That is true, I have no doubt.

Mr. HUSTED. Did you tell the committee, the Senate Agricultural Committee, or did any member of the Sugar Equalization Board that appeared before that committee say to the Senate committee, in substance, that notwithstanding the refusal of the President to authorize the purchase of the Cuban crop you believed it advisable to buy the Cuban crop and urged the Senate to report legislation which would give you the necessary power to control the Cuban crop after its purchase?

Mr. GLASGOW. We did not do it in the words you state. We did not tell them that notwithstanding the failure of the President and notwithstanding this, that, and the other thing that we did; but we presented to them a memorandum.

Mr. HUSTED. Did you do that in effect?

Mr. GLASGOW. Yes. We presented to them a memorandum showing that the almost unanimous opinion of that board was that it ought to be purchased. We told them that, in our judgment, it ought to be purchased (before that committee), and we told them, further, it could have been purchased then at the same price it could when the memorandum was finished.

Mr. HUSTED. And, notwithstanding the fact the President of the United States, who was the Chief Executive and who, during war times and under war powers, has the chief direction of all such matters, that you thought the Congress should take the matter out of his hands and authorize the purchase of the sugar and the enactment of legislation necessary to do that?

Mr. GLASGOW. No; I did not say that. I said to them I thought the sugar ought to be purchased, and I thought a bill ought to be passed by Congress with the powers which I incorporated in that bill to give us the power to handle it. I told them that, and I told them

it could be purchased at the price it had been purchased prior to that, in August.

Mr. HUSTED. You said that ought to be done, did you?

Mr. GLASGOW. Of course we did. That is what we were there advising them to do.

Mr. HUSTED. I thought you said awhile ago you did not urge any legislation at all?

Mr. GLASGOW. I said I was not there in the way of pressing legislation on them, but I thought the sugar, as a commercial proposition, ought to be purchased.

There is just one other question. You asked about whether there were any local conditions considered, differences of treatment of localities by the Food Administration. I happened to be counsel for that administration, and Mr. Zabriskie just overlooked one thing. When we came to fix the price of beets, upon which was based the price of beet sugar, we found out what the cost was in Michigan, and we found out what the cost was in California, and we found out the cost in other places, and the prices of the beet sugar were fixed in a locality, dependent upon costs, and not a uniform factor all over the United States. I just wanted to show that to get it accurate, that we did base, dependent upon the locality and its costs, the price at which the beets were to be bought by the refiner of the beet sugar on local conditions.

Mr. TINKHAM. I just want to ask the witness one more question, and that is this, if he does not think that with a very short crop in Louisiana, even if it did sell as high as 25 or 26 cents per pound and was rapidly absorbed in the trade, that without the Attorney General taking official action and stating what might be well understood as an official price, that a great difference might have been caused in the rather excited and rising market in Cuba? In other words, Mr. Chairman—

Mr. GLASGOW. No; let me answer the question now. I do not, and I do not for this reason, that I think, and it is my opinion on the facts which I have followed all the way along, that what disarranged Cuba was not the Attorney General's telegram that he would not prosecute for profiteering, because he did not think he could convict, based upon the information he had. It was not that that disarranged Cuba, but it was the fact that the Louisiana sugar producer could get from 15 to 21 cents more per pound for his sugar. That is the whole thing.

Mr. HUSTED. Then your opinion and the opinion of Mr. Zabriskie differ on that point?

Mr. GLASGOW. I do not think Mr. Zabriskie differs with me on that subject. I do not think Mr. Zabriskie disagrees with me.

Mr. HUSTED. You were counsel for the Sugar Equalization Board?

Mr. GLASGOW. And a member of the board, along with him, and he is the president of it, and I have the greatest affection and respect for him and his opinions and I think Mr. Zabriskie agrees with me that what disarranged the Cuban market was the high price—one element of it was the high price the Louisiana sugar brought in the market when the sugar was for sale, not specifically the telegram of the Attorney General.

Mr. HUSTED. Do you consider that the action of the Attorney General in fixing the maximum price of 17 and 18 cents for Louisiana sugar was a mistake?

Mr. GLASGOW. I think this, Mr. Chairman, about that: I do not go as far as to say that; I think here were the producers in Louisiana in the condition which they said they were before the McNary committee, an almost hopeless condition. They said that they could not make out unless the price went away up, and if they were trying to go out and save themselves, I think it was a very great hardship upon those people to leave them under the idea that if they sold sugar at what the market called for, and when their cost was what they said it was, that they might be prosecuted in the United States courts for profiteering; and if they could get to a basis where the Attorney General found the evidence did not justify a prosecution on the grounds of profiteering, because he could not prove his case, I think it was just and right for him to have sent a telegram to that effect. That is my own judgment. You gentlemen may not agree with me.

Mr. HUSTED. Do you think he had any authority of law for such action?

Mr. GLASGOW. I have seen it done frequently by prosecuting officers, and I think you can, with propriety, say to a locality, "We will not prosecute you unless you go beyond a certain price."

Mr. HUSTED. Do you think the Attorney General was authorized to fix a price for a whole section of the country—that is, for the whole State of Louisiana—when he fixed the price?

Mr. GLASGOW. I do not think he undertook to fix a price. I think he undertook to say that "In my opinion, my duty and obligation would not be discharged if I undertook to prosecute you if you do not get more than 17 cents." And that is what I understood him to say. I understood his telegram to say, "If you do not get more than 17 cents, from all the facts that are shown to me, I do not believe I can sustain a prosecution for profiteering; and that if you do not go beyond that, then I do not think that the Government ought, in justice, to prosecute you for it."

Mr. HUSTED. You are putting language in the Attorney General's mouth which is not in the telegram.

Mr. GLASGOW. No, sir. You asked me my construction of it, and that is my construction of his tactics. You asked my opinion about it, and that is my judgment.

Mr. HUSTED. Certainly; but the answer was not responsive to my question.

Mr. GLASGOW. The answer was not quite what was expected, probably, but it was my judgment about it, sir.

Mr. HUSTED. It was not what was expected, for this reason, solely, that it was not responsive to the question that I asked you. It went far afield of the question that I asked.

Mr. GLASGOW. I will try to confine myself to a direct answer if you will put the question again. I do not want to do that.

Mr. HUSTED. I would like to ask under what authority of law, in your opinion, the Attorney General of the United States has any right to say to a group of people representing an entire State, this is under the Lever Act or under general authority of the Attorney General of the United States, either one, he has a right to

say, "If you do not sell sugar for more than 17 or 18 cents, as the case may be, according to the character of the sugar, that you are immune from prosecution at the hands of the Attorney General of the United States.

Mr. GLASGOW. I think, Mr. Chairman, that is drawn from this, that the Attorney General, through his Department of Justice and local representatives, is only required to prosecute people who violate the law and he has to make an investigation to ascertain whether they violate the law. If he comes to the conclusion, after that investigation, that the evidence that he has before him does not justify a conclusion that they have violated the law, then I think he has impliedly got a right to say that that is a fact.

Mr. HUSTED. Is the Attorney General of the United States authorized, where there is not any prosecution, to advise individuals as to whether or not he will prosecute them?

Mr. GLASGOW. Ordinarily he has not, sir; in ordinary cases. I take this to be a different matter. Here is a case where the industry of a whole State was involved. It was equivalent to a public question in Louisiana. It was quite different from the ordinary case of an individual prosecution for violation of the statute law of the United States. I think it was quite a different situation.

Mr. HUSTED. Then you base your opinion upon the fact it was a big question instead of being an individual question?

Mr. GLASGOW. No; I do not say a big question. I said a public question affecting the industry of an entire State. On a question of whether a man is a big criminal or a little criminal, I have no distinction to make, except that the big one ought to be prosecuted more vigorously. But when it comes to a question, as one like this, of one of public interest to the citizenship of a whole State, I do not think it is quite on a parity with the prosecution of the individual violator of the statute law of the United States.

Mr. HUSTED. Was not the Attorney General by the Lever Act limited to the prosecution of individual cases of profiteering?

Mr. GLASGOW. Yes, sir; I think he was.

Mr. HUSTED. Then, under what authority of law do you claim that the Attorney General has the power, where no prosecution has been had, to advise citizens of the country that certain acts will not be prosecuted under the Lever Act?

Mr. GLASGOW. Mr. Chairman, it is an utter impossibility in a situation of this kind to treat it in any way but as an average situation. There may have been people in Louisiana who made profits, and some of them may have made inordinate profits at 17 cents. Some of them, I have no doubt, lost money at 17 cents. I think in a situation of that kind you are bound to treat it as an average situation over the whole territory.

Mr. HUSTED. I am not going into that question.

Mr. GLASGOW. That, I thought, was your question.

Mr. HUSTED. I am going into the question of authority. If the Attorney General had authority to do in this particular case, with respect to the price of sugar in Louisiana, what he did, would he not have equal authority to fix the prices of other food products in the country?

Mr. GLASGOW. You see, Mr. Chairman, the difference between us is (and I think it is a perfectly honest difference; it is, I know, in my

case, and I take it it is in yours) I do not take it that the Attorney General by that telegram fixed the price at 17 cents. What I think he did was to say that "I do not believe the evidence before me justifies a prosecution." I think the effect of it was to say, "I do not think the evidence before me would justify a prosecution unless the 17 cents is exceeded." That is my construction of it, sir.

Mr. HUSTED. The effect of the whole thing was to assure the producers of sugar in Louisiana that they would not be prosecuted by the Attorney General of the United States if they did not sell for more than 17 or 18 cents.

Mr. GLASGOW. I think that was the purpose of it.

Mr. HUSTED. And in view of that arrangement of the Attorney General, he could not, with very good grace, could he, have gone into court and prosecuted an individual who sold for less than 17 or 18 cents?

Mr. GLASGOW. I do not think he could.

Mr. HUSTED. Even though that individual was profiteering, as a matter of fact?

Mr. GLASGOW. I do not think he could. I do not think he could, with propriety, have done it.

Mr. HUSTED. Now, in view of the fact that the Attorney General said that he would not prosecute an individual for profiteering who did not sell for more than 17 or 18 cents, as the case may be, was not the effect of that to fix a maximum price for the sugar in Louisiana?

Mr. GLASGOW. I think it was. I think the effect of it was certainly to induce, and I suppose the practical effect was to accomplish the sale of the Louisiana sugar at not exceeding and perhaps up to 17 cents.

Mr. HUSTED. It was not at all likely, when the Attorney General practically promised immunity from prosecution if they did not sell for more than those prices that anybody would sell for less?

Mr. GLASGOW. No; I do not think that anybody would have sold for less; at least, I would not have done it myself. And, further than that, the condition of the country has been very curious, you know, Mr. Chairman. The people of the country as a whole have not been thinking so much about the price they pay for sugar as they have been to get it. That has been the real thing. The people have gone mad in the country; they will pay anything for what they want. And while there has been a considerable amount of complaint as to prices, and justifiable complaint as to prices, of course, I want you to understand our position before that McNary committee, sir; because we were not there urging Congress to set a fixed policy.

Mr. HUSTED. I thought you went a little further than you intended to go in your last statement.

Mr. GLASGOW. No; I did not. I do not think so, sir. We were not there to tell them the policy to follow; we were there to tell what we thought was the best thing to do in reference to that crop.

Mr. HUSTED. As a matter of fact you did not do anything but lay the facts before them?

Mr. GLASGOW. We did not do anything but lay the facts before them and tell them we thought it ought to be purchased.

Mr. HUSTED. Did you present a recommendation?

Mr. GLASGOW. Oh, yes, sir; we presented the memorandum that it be purchased.

Mr. HUSTED. You presented your memorandum that you sent to the President?

Mr. GLASGOW. That is the same thing, sir.

Mr. HUSTED. Oh, no; not at all.

Mr. GLASGOW. Why?

Mr. HUSTED. I do not think that is the same thing at all. The fact you recommended to the President of the United States three or four months before was not the same thing as recommending it to them.

Mr. GLASGOW. Oh, no; not three or four months.

Mr. HUSTED. Two or three months.

Mr. GLASGOW. Oh, no; that was the 3d of August, and this was the 14th of October.

Mr. HUSTED. That is two months.

Mr. GLASGOW. And we told them we could buy it at the same price. And I also went so far as to take up my time to draw a bill for them which was only to be enacted in case they determined the policy of the country was to buy.

Mr. HUSTED. The testimony before the Senate committee, and I have read it in the hearings, does not show, so far as I can remember, that you advised or requested that committee to enact any legislation whatsoever.

Mr. GLASGOW. And I tell you, sir, that the purpose of my stating, as I did, over and over to that committee, that we were not pressing them to pass any bill, was that I did not want that board to be put in the attitude of coming down here lobbying to get through a bill to continue its own activities. But there is no doubt in any man's mind who was at that committee hearing that Mr. Zabriskie and I thought, and the board thought, when we were there, that we ought to buy the crop of Cuban sugar. There is no doubt about that, sir. That was the fact. We thought so.

There is one other thing, sir, if you will just let me say: After that suggestion as to the Sugar Board's buying or making some arrangement which was nebulous—it had not been worked out as to how it would be handled, the Louisiana crop and taking the loss on it, absorbing the loss, in order to keep the price down—we had a meeting, Mr. Zabriskie and myself, at Senator Ransdell's office, with the representatives of Louisiana. The meeting at Senator Ransdell's office was to see whether we could not work out any basis upon which we would take the loss on the Louisiana crop. Now, the subject of 15 cents was discussed there and Mr. Zabriskie and I determined we would recommend to the board not exceeding 15 cents; but the Louisianians did not commit themselves to the 15 cents. They said they would have to go back to Louisiana and discuss it with the people of Louisiana. They did not commit themselves.

Mr. HUSTED. But they did not turn it down absolutely?

Mr. GLASGOW. They did not, sir; they did not turn it down at that time.

Mr. HUSTED. At that time, it was still subject to negotiation?

Mr. GLASGOW. Yes, sir. Now, Mr. Chairman, I have no particular interest in this except to get the thing straight.

Mr. HUSTED. That is all the interest that any of us have.

Mr. GLASGOW. I know that is your interest, and I just want you to know that is mine.

Mr. TINKHAM. I want to add it is mine, too, Judge.

Mr. GLASGOW. Of course, I know that is yours, Mr. Tinkham; and I know you would not think I would make any other suggestion.

Mr. TINKHAM. I know you would not, Judge.

Mr. GLASGOW. All I want you to do is to bear in mind this principle, and I believe you will find it correct, that what disturbed Cuba was the condition in the United States of a demand greater than the supply for sugar and the fact that they knew, regardless of any action by the Attorney General, that they would not be troubled with Louisiana, because Louisiana could get from 15 to 21 cents for their sugar regardless of the Attorney General or anyone else.

Mr. HUSTED. There is just one concluding question I want to ask you. Do you not think that official sanction, official sanction by the highest law officer of the United States of a price of 17 and 18 cents for Louisiana sugar, would naturally and, in fact, inevitably stimulate the Cuban market more than any price which was the result of the normal operation of the law of supply and demand on the market?

Mr. GLASGOW. I can not say about that, sir. It might be. But what I think is they had enough stimulation in the economic condition, and Mr. Zabriskie and I do not disagree on that.

(The subcommittee thereupon took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reconvened, pursuant to the taking of the recess, at 2 o'clock p. m.

TESTIMONY OF MR. ALFRED W. McCANN, OF THE NEW YORK GLOBE, NEW YORK, N. Y.

(The witness was duly sworn by Mr. Husted.)

Mr. HUSTED. You are connected with the New York Globe?

Mr. McCANN. I am; yes, sir.

Mr. HUSTED. Did you have an interview or interviews with Mr. George Zabriskie, president of the Sugar Equalization Board, regarding the actions of the Attorney General and his concurring in that action fixing the maximum prices for the sale of the sugar of Louisiana?

Mr. McCANN. I did.

Mr. HUSTED. When was that interview?

Mr. McCANN. The first one was December 26, 1919, on which occasion Mr. Zabriskie called me on the telephone—in that connection, I want to take sharp issue with his testimony of this morning. I asked him, before he left here, to return this afternoon so that what I had to say might be said in his presence and not behind his back, and I asked Congressman Tinkham to compel him to return if it was possible, for this reason: Prior to December 26, Pierre Garvin, prosecutor in the court of public pleas of Hudson County, N. J., acting as an agent of the Department of Justice, was struck by the phenomenon that whereas the housewife could buy no sugar

in any quantities—not even a half pound—at the Government price of 11 cents a pound, the day before, she suddenly found herself able to buy 50 pounds, 100 pounds, or a barrel, at 23 or 24 cents. He sent out all the investigators attached to his office and discovered that everybody had sugar, and that this sugar was accounted for, on the statement of several dealers in sugar—the Bluebird Packing Co. being one of them and Turner Bros. another of them—due to the arrival of a boat, the *Tupper*.

Mr. SUMNERS. May I interrupt the witness just a moment to inquire: I presume it is not intended to invoke the ordinary rule against hearsay testimony? This witness is testifying very freely as to what was discovered by an investigator.

Mr. HUSTED. All witnesses have testified to hearsay.

Mr. McCANN. The *Tupper* was reported to have brought in this sudden supply of sugar that was within the reach of everybody at 23½ cents. I personally went to the Shipping Board to find out from whence the *Tupper* came and what cargo of sugar she brought with her, and I discovered the *Tupper* did not bring any sugar into the United States for the reason there was no such vessel and that, therefore, the explanation that this sugar had arrived because the voyage of the mysterious *Tupper* must, by reason of the facts, fall to pieces.

In my report of these facts of December 26 I challenged the Sugar Equalization Board and asked if it intended to pass the buck in condoning this situation, because it had failed to reply to a telegram of Pierre Garvin's office, and because the Department of Justice had sent, as was characteristic of it, to Pierre Garvin an evasive and unresponsive reply to his telegram, asking what he could do under the circumstances.

Mr. Zabriskie said this morning I had had two brief telephonic communications with him. The records of the telephone company show each of them—and he initiated each of them—was a communication of 20 minutes. He said at that time: "We do not intend to pass the buck, but we do not intend to be the goat. And I spoke reluctantly on October 3, at the hearing on the McNary bill and, when pressed, brought the President's name into the hearing. I do not want to now add to the President's burdens by embarrassing him. I am a man of peace and I prefer this thing would have taken another course, but I and the Sugar Equalization Board, during the month of August, tried to get the President to permit us to buy 4,000,000 tons, the entire crop, and the largest crop in history of Cuban sugar at 6½ cents, and I repeatedly asked the President to let us buy that sugar, but he would not do it. Then came along the Attorney General, with his curious conduct with respect to the Louisiana planters' crop and the price named of 17½ cents. I can not accuse him," he said, "of fixing the price at 17 or 18 cents, but it was generally known that he condoned the price and would stand for it.

"I realized that the effect of this would be to advance the price of Cuban sugar, and in order to offset the folly of the Attorney General's action I rushed as large a quantity of beet sugar into the Southern States as I could get my hands on at 10 cents a pound, or less, so as to neutralize this highly stimulated condition in the Cuban

price situation. But there was not enough beet sugar to go around and that device failed, with the result that the price mounted." He said, "Now the sugar situation has got into politics, and that is the only reason why the Sugar Equalization Board wants to liquidate and get out. If it had not got into politics, it would have taken care of itself. Only last week," he said, "35,000 tons of sugar came into this market at 9 cents a pound and a small fraction came at 13 cents a pound, as against 9,000 tons for the corresponding week of the previous year and 6,000 for the week preceding that. This sugar ought to be averaged by the retailer and sold to the consumer at retail through the retail stores at not to exceed 18 cents a pound. And, in the meantime, as there is only 24 hours, really, between raw sugar and the retailers of the country, so far as the refiner is concerned, the wholesale price ought to drop here to between 13 and 15 cents a pound."

He said this morning that I had elaborated upon his statements. Not only did I not elaborate upon them but I actually, at his request, suppressed some of his statements. He said, "I will give you an explanation, provided you do not publish it, of a situation that materially affects the price of sugar and may have a direct bearing upon the future." He said, "When the Cubans saw that the Louisiana planters were able to get away with 17 and 18 cents they made the mistake of assuming that they could get a much higher price. They did not take into consideration that the labor in the cane fields, seeing they got their share, would very likely ask for its share. With what result? The laborers in the cane fields in Cuba, now working six or seven days a week to harvest the crop, because it is necessary for them to work that much in order for them to make a living wage, with an increase in wage they will only have to work four or five days a week and a large part of the crop will remain unharvested and the juice of the cane will ferment, thereby making it impossible to get sugar out of it, and the production will be materially decreased and the planters, many of them, will face ruin. And they already see the mistake of their effort to gouge the public, because of the Louisiana price, and are anxious to have the price reduced. They do not want the price to go higher. They recognize now that high prices are self-curative, that they curtail consumption and increase production; and with labor reducing the work in the fields, because of an advance in wage, they won't be able to have an increase in production and they face disaster."

That was the substance of his first conversation with me on December 26, 1919.

Mr. HUSTED. Was that conversation over the phone?

Mr. McCANN. That conversation was over the phone. I made notes, and immediately dictated what he had said—within half an hour—to my stenographer, who was there for the purpose. I get a great deal of information of the kind over the phone from men in authority—officials.

Mr. HUSTED. Before you testify further, will you state what your connection is with the New York Globe, and what your activities are and have been with reference to foodstuffs?

Mr. McCANN. For eight years my specialty on the Globe has been the production and distribution of foodstuffs, the various

sophistications and adulterations of foodstuffs, and the artificial rigging of the market in foodstuffs for the purpose of maintaining lofty price levels that are not justified by the law of supply and demand, and all the other vagaries through which foodstuffs pass on their way from the producer to the consumer. Hence, the appeal of Prosecutor Garvin to the Globe through me for its assistance in helping him to show up the situation as it affected the local consumer in the metropolitan area, particularly as it affected the public of the State of New Jersey, where he, as far as Hudson County was concerned, was public prosecutor.

Mr. HUSTED. I understood you to say that you were called up by Mr. Zabriskie?

Mr. McCANN. Yes.

Mr. HUSTED. You did not call him?

Mr. McCANN. I did not call him up on either occasion. He called me twice, and he called me in order to assure me that he did not propose that his children or grandchildren—or members of his family, I believe he put it—should be the goat in this matter; that he had been criticized, and criticized unjustly, and he was sick and tired of it, and he wanted the responsibility for the present situation to go direct to its origin, namely, the President of the United States and the Attorney General.

Mr. HUSTED. Will you tell us the facts about the second interview?

Mr. McCANN. The second interview was an elaboration of the first, in which he again called me and told me that—

Mr. WHALEY. How long after the first interview?

Mr. McCANN. I think the Thursday following, about the 29th. It was in the month of December, the latter part of the month, just before the holidays, just before New Years. It was after Christmas. He said to me that he trusted that my article of the 29th, I think it was the afternoon of the 29th he called me up, would not put him in a bad light with some of his associates; that he did not intend to speak for publication when he talked with me, but I had challenged him and he was talking with me for the purpose of setting me right. And I said, "You know I am a public voice; when you call me up of your own volition you are giving me information to 200,000 readers of the paper I represent and there could not have been anything private about it and, furthermore, you asked me not to touch on the labor situation with regard to the workers in the cane fields and I kept faith with you and did not. So, you must have had the idea of resenting the impression, at your expense, to the effect that you are responsible for this when, as a matter of fact, you claim you were innocent and the President and the Attorney General were the guilty ones." He said again, "I am a man of peace, as I told you before; I do not like controversies and do not like disputes and quarrels, and I am sorry this thing has gotten out the way it has."

Mr. HUSTED. Did he deny the truth of any of the statements you published in your paper?

Mr. McCANN. He did not; and this morning he made the admission in my presence they were substantially correct except for the fact I had elaborated on his statements which were made in two very brief telephonic communications. I think that is what he said this morning. I am challenging him, as far as the records go, squarely on that issue and leave the facts to speak for themselves.

He had another controversy with Attorney General Palmer and I used Attorney General Palmer's statements issued by him to the Associated Press following the proclamation by the President of November 21, 1919, conferring upon the Attorney General the broad powers exercised by the Food Administration during the war, and the Attorney General's statement that those powers would be exercised only with respect to sugar, although there might be—this is in substance only; I can quote from his words; I have them here—there might be occasions when other foodstuffs would be involved. Then he spoke of the fixed price of 12 cents for sugar, except the 17-cent price for the Louisiana crop already fixed. And with that, the Sugar Equalization Board, through the voice of Mr. Zabriskie, took issue and sent out another statement declaring the Attorney General had made a mistake and that if the price of 12 cents were not fixed the sugar situation would rectify itself and return to normal. I have the very words here.

Mr. HUSTED. Just one minute, if I may interpose: You speak about broad powers being conferred by the President upon the Attorney General to control the food situation. Those broad powers were conferred, were they not, after the Attorney General had agreed upon this maximum price of 17 and 18 cents for Louisiana sugar?

Mr. McCANN. The actual date of the conferring of those broad powers was November 21, 1919.

Mr. HUSTED. And the date of the fixation of this maximum price in Louisiana was the 8th of November?

Mr. McCANN. So I understand. In connection with the sugar shortage in New York it may be pertinent to this inquiry to call attention to the fact that the Sugar Equalization Board, functioning as an allocating body had made a false estimate of the quantity of sugar available for allocation. It was estimated by Mr. Zabriskie that there were 250,000 tons available between the months of October and January 1, for allocation on a pro rata basis. But as the men stood in line to get their sugar and received it, it was discovered toward the rear of the line, there was a shortage of 50,000 tons.

A "standing room only" sign was put out and there was not any more sugar; and the publication of that fact caused a considerable commotion in the press, because advantage of it was taken immediately to urge higher prices and to justify higher prices on sugar; and Mr. Zabriskie justified the sale of 6,000,000 pounds of sugar at 12 cents a pound as against the prevailing and fixed price of 9½ cents a pound in order to keep certain candy factories going. This sugar, I believe, was originally intended for Canadian consumption, but to keep it here he justified the higher price; and he also announced that to invite sugar, other than Porto Rican and Cuban sugar, to the United States at prices that would attract that sugar to come from Brazil, Peru, and Santo Domingo and other sugar-producing countries that the higher price would not be regarded as profiteering and that those who needed sugar urgently could make their purchases at such prices as were satisfactory to these other countries. It was he himself who first broke the sugar price, advancing it from 9½ to 12 cents, and thereby establishing a precedent for the Attorney General's conduct in condoning the fixed price of 17 cents in Louisiana.

Mr. HUSTED. Now, what did Mr. Zabriskie say to you in either or both of those interviews you had with him over the 'phone as to the propriety and effect upon the market of the action taken by the Attorney General in agreeing to these maximum prices of 17 and 18 cents, respectively, for the Louisiana sugar?

Mr. McCANN. He said it would obviously be followed by a marked advance in price of the Cuban crop, for which reason, to offset that, he had rushed this beet sugar into the Southern States to show the Cubans that sugar was purchasable there at 10 cents as well as 17 and 18 cents, and to thereby depress the price asked by the Cubans and to prevent their gouging, to prevent their profiteering. That was his explanation to me why he had sent the beet sugar there. I did not know he had sent the beet sugar there. That was a secret movement that originated in the Sugar Equalization Board and was not made public, because to have made it public would have been to have shown the trade how they operated.

Mr. HUSTED. Did he say anything as to the effectiveness of his action in moving this beet sugar down into the southern zone?

Mr. McCANN. He did. He said two things about that: first of all, there was not enough beet sugar within reach to bring about the desired result; and, secondly, there was an arbitrary advance of 2 cents a pound in the price of beet sugar which had nothing to do with cane sugar and, as a direct result of the Attorney General's fixing the price, the price of beet sugar also advanced 2 cents a pound, although it bore no relation to cane sugar, either in cost of production, distribution, or in any other way.

Mr. HUSTED. Now, let us see if we get that straight for the record. Mr. Zabriskie said, if I understand you, that the direct effect of the act of the Attorney General, as you have stated, was to increase to the American consumer the price of beet sugar by 2 cents a pound and also to increase the price of the Cuban sugar to the American consumer?

Mr. McCANN. Precisely.

Mr. WHALEY. Who told you that, Mr. McCann; did Mr. Zabriskie tell you that?

Mr. McCANN. Both of those statements Mr. Zabriskie made in substance, not in those words.

Mr. WHALEY. I am just trying to get the facts: the chairman was repeating, as I understood, what you said?

Mr. McCANN. There was but one effect. First of all, it did increase the price of the Cuban crop and it increased the price of the beet crop—in the latter case 2 cents a pound.

Mr. WHALEY. I thought the price of the beet crop was fixed?

Mr. McCANN. The records and the public statements issued by the Sugar Equalization Board do not justify that thought.

Mr. WHALEY. He made the statement to-day that it was fixed at 10½ to 11 cents. That is the reason I am asking you if, having had it fixed, it went up all the same. Did he tell you it went up all the same, after it had been fixed?

Mr. McCANN. No; he did not say anything like that, "that it went up all the same after it had been fixed." He said the direct result was to increase the price of the beet sugar.

Mr. WHALEY. You heard him testify to-day; you stood here and heard it?

Mr. McCANN. Yes.

Mr. WHALEY. Did not you hear him make the statement, in answer to my question about beet sugar, that the price of beet sugar had been fixed?

Mr. McCANN. I listened here for several hours to the testimony. If my memory was refreshed from reading the stenographer's notes I would probably recognize it.

Mr. WHALEY. I am asking this to refresh my own memory, because my recollection is Mr. Zabriskie testified to-day that the price of beet sugar was fixed at 10½ and 11 cents.

Mr. McCANN. There are three incidents I think ought to go in in chronological order in order to make it clear: First, the proclamation of the President of November 21; second, the statement issued by the Attorney General immediately following; and, third, the statement issued by Mr. Zabriskie challenging the Attorney General. I have those three statements here, and I will be glad to read them.

Mr. HUSTED. Will you read those statements first for the information of the committee, and then put them in the record?

Mr. McCANN. On November 21 the President issued a proclamation transferring to Attorney General Palmer the broad authority exercised by Food Administrator Hoover during the war. The Attorney General at once issued a statement in which he said:

It is my intention to exercise this authority only so far as sugar is concerned; but I am prepared to use it to meet any similar situations affecting other food supplies which might arise. The first act of the Department of Justice will be the establishment of a price of 12 cents a pound wholesale for beet sugar, except the Louisiana crop, the price of which has been fixed at 17 cents a pound wholesale. This increase of price is necessary to prevent a famine.

Whereupon Mr. Zabriskie issued this statement, published in most of the newspapers—all of those that cared to carry the statement—

Mr. HUSTED. Before you read Mr. Zabriskie's statement: I note that the Attorney General in his statement says that the price of Louisiana sugar had already been fixed at 17 cents a pound.

Mr. McCANN. Yes.

Mr. HUSTED. Was there any fixation of price by the Attorney General of Louisiana sugar except the price which was fixed on the 8th day of November, 1919, after he received his communication from the United States attorney in Louisiana?

Mr. McCANN. Prior to the issuance of that statement, the price of beet sugar was down at 9½ to 10 cents and he fixed the price of beet sugar at 12 cents. This automatically advanced the price of beet sugar, which was included "in all" sugar. That is wherein the direct result of the advance in the beet-sugar price was manifest. The Attorney General himself used the figure 12 cents for all sugar in his statement, following the proclamation of the President, and with that Mr. Zabriskie took issue by this statement—

Mr. WHALEY. Right there, let us get this clarified: Previous to that proclamation, had not the price of beet sugar been fixed at 10½ to 11 cents, at approximately the same time the Louisiana crop was fixed at 17 and 18 cents?

Mr. McCANN. It was sent down by the Sugar Equalization Board to Louisiana at 10 cents.

Mr. WHALEY. I am just asking the question whether it was fixed at approximately the same time.

Mr. McCANN. On that issue, I am not competent to testify; I do not recall; I do not remember.

Mr. WHALEY. Mr. Zabriskie said to-day the Attorney General had fixed the price of beet sugar at 10½ cents to 11 cents when the Louisiana crop was fixed at 17 and 18 cents.

Mr. McCANN. I think his own statement is sufficient if he testified to that. In the third statement Zabriskie said:

M. Palmer's intention of fixing a flat general rate of 12 cents a pound is wholly unnecessary. Without such action a reduction in the price of sugar might be expected; but the establishment of a flat rate will operate as an automatic minimum to raise the price of all sugar—

He specified all—

To those in this country, most of which can be manufactured on the 10-cent basis. Moreover, in the Attorney General's program the Cuban producers will be inspired to hold their entire output for the higher price. The sugar shortage is only temporary and will shortly be remedied. It is too late for any effective Government control of the sugar industry.

That was his official statement.

Mr. HUSTED. Now, regarding the question which I put to you, and which you did not answer: Was there any fixation of price for the Louisiana crop by the Attorney General other than the fixation which is alleged to have taken place as a result of his concurrence in a tentative agreement made by the United States district attorney in Louisiana with the producers in Louisiana of 17 and 18 cents for the two different kinds of sugar?

Mr. McCANN. I do not know. I have no information on that at all. But I did learn from very good authority, and ask that that authority be subpoenaed here, that at the time of the announcement that the Attorney General would stand for the 17-cent price on Louisiana sugar there were two shiploads of Cuban and Porto Rican sugar bound for Boston. They were suddenly reached by wireless and ordered to head for Texas and to dump their Cuban sugar in there, so it could pass through Louisiana and lose its identity and get the benefit of the Louisiana price.

Mr. HUSTED. Will you state the source of your information?

Mr. McCANN. Yes. Roger I. Sherman, National Arts Club, Grammercy Park, New York City.

Mr. HUSTED. What is his business?

Mr. McCANN. He was formerly a canner. He was in Porto Rico at the time. He was the man who had arranged with the War Department to manufacture 10,000,000 pounds of jams for the boys in khaki at Porto Rico, taking advantage of the vast quantities of ripe pineapple, grapefruit, and oranges that go to waste there every year, buying sugar at 6.58 cents a pound for the purpose, provided he could get the allocation of the cargo space from the Shipping Board to bring that pure jam at 22 cents a tin of 26 ounces each to France. The Shipping Board could not or would not give him the cargo space, with a result that 6,000,000 pounds of pure jam were brought in all the way from Tasmania, across the Pacific; reloaded at San Francisco; steamed around through the canal and then across the Atlantic, and notwithstanding the fact that the price was 32 cents instead of 22 and not considering the high prices of the increased distance traveled and that most of the stuff fermented en

route, at a total loss. He has some very interesting testimony, I believe, on that point.

Mr. SUMNERS. Are we going into that matter, too, Mr. Chairman? Mr. WHALEY. Let us keep to sugar.

Mr. McCANN. Sugar has a great deal to do with that because it was purchasable at 6.58 cents for the jam that could not be purchased.

Mr. SUMNERS. I just want to call your attention, Mr. Chairman, to the character of the testimony that is brought out.

Mr. HUSTED. I do not think the testimony, while interesting, has any special bearing upon the questions at issue.

Mr. SUMNERS. Then it ought to go out.

Mr. HUSTED. Have you concluded the reading of your several statements to which you referred?

Mr. McCANN. I might say with respect to the sudden appearance of vast quantities at 23 cents a pound, where there was none at all to be obtained at 11 cents a pound, and the statement to the effect that sugar had arrived from Santo Domingo, Peru, Brazil, and Java, that the United States customhouse keeps a careful record of the arrival of those foreign sugars, and those records disclosed at the time that but 3,791 tons came in from San Domingo, but 1,871 tons from Peru, but 581 tons from Brazil, and 1,427 tons from Java, a gross total of 8,823 tons, or about one-half pound per person for the State of New York; and, notwithstanding that fact, anybody could buy 50 or 100 pounds of sugar—just showing how they were playing the game there on the public under their so-called laws of supply and demand, with neither the Food Administration nor the Department of Justice raising its hand nor causing an investigation, because they did not assist Pierre Garvin in Hudson County to carry out his investigation, for which he complained very bitterly. And in New York City day before yesterday they exercised their broad powers by pursuing a haberdasher for selling collars and shirts at a greater profit than they considered was justified, and he was so humiliated that he blew out his brains; and yet on the same day the packers advanced the wholesale price of meat 6 cents a pound, and yet at the same time in the Bush Terminal and certain cold-storage warehouses there was lying 50,000,000 pounds of beef unsold and unsalable belonging to the War Department, and the War Department is anxious to get rid of it at 10 cents a pound.

Mr. SUMNERS. That is, beef or sugar?

Mr. McCANN. Beef. I am talking about the exercise of the broad powers attributed to the Department of Justice in pursuing a little haberdasher and causing him to blow out his brains while the packers advance the wholesale price of beef 6 cents a pound on the grounds of congested traffic, and yet there were 50,000,000 pounds lying in storage to be consumed belonging to the War Department.

Mr. WHALEY. That is the fault of the War Department.

Mr. McCANN. I think it is a fault of any competent authority to permit an advance of 6 cents a pound under such circumstances.

Mr. WHALEY. You would not say the Attorney General has a right to sell beef?

Mr. McCANN. No; but I think he has a right to bring an action for profiteering when they advance the price of beef 6 cents a pound wholesale in one day.

If he can pursue a man for selling shirts and collars for what he considers an excess profit, certainly he has a right to pursue the packers when they send the beef up 6 cents a pound wholesale in one day under circumstances such as that.

Mr. WHALEY. Does not the testimony show the little haberdasher had actually bought the things at one price and sold them at a profit of 150 per cent and more?

Mr. McCANN. It might.

Mr. WHALEY. And did it not show, furthermore, he had certain marks on all the clothing whereby he advanced the price from 100 to 150 per cent?

Mr. McCANN. I was an examiner of the Federal Trade Commission for 11 months—

Mr. WHALEY. I am just asking about that particular case, because I know something about it and I just want to see what you know.

Mr. McCANN. It bears a parallel to the packers, because Francis J. Heney brought out a good deal of information—

Mr. WHALEY. He brought out a great deal of rot that had no bearing on it, and he attacked the action of the Judiciary Committee which had nothing to do with it, and I was included as a member of that committee.

Mr. McCANN. I do not justify his conduct in that matter at all. I know he did bring out the evidence, because I furnished affidavits, as to many members of the industry, attacking many members of the packing industry, including Max Sulsberger.

Mr. WHALEY. I do not know who furnished the affidavits in reference to the Judiciary Committee attacking that committee.

Mr. McCANN. I am very glad to say I had nothing to do with that, because I did not know the Judiciary Committee and had never been in contact with it.

Mr. HUSTED. As I understand, Mr. Tinkham, your case is closed; is that correct?

Mr. TINKHAM. I have nothing further to offer. All I intended to offer was a prima facie case, and I have not offered anything I did not offer before the House of Representatives when I asked for the committee to be appointed. It is all a matter of public record that I have submitted, and I asked that Mr. Zabriskie come here this morning and make his statement, as he did, and that Mr. McCann, who had an interview with Mr. Zabriskie, do the same. And I believe I have presented a prima facie case to the committee so they may conduct their investigations further if they desire.

(The committee thereupon adjourned subject to call.)

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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HATTON W. SUMNERS.

INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL RELATING TO THE PRICE OF LOUISIANA SUGAR.

SERIAL No. 21, PART 4.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 29, 1920.

The committee assembled at 10.30 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. The committee will come to order.

Mr. Attorney General, we will be very glad to hear any statement that you desire to make in relation to the matter under investigation.

STATEMENT OF HON. A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES.

Attorney General PALMER. Mr. Chairman and gentlemen of the committee, I take it that what you desire to hear me about particularly is House resolution 469, which is, as I understand—

Mr. HUSTED (interposing). That is the only matter.

Attorney General PALMER. Is that the only matter?

Mr. HUSTED. That is the only matter.

Attorney General PALMER. That resolution simply empowers this committee to investigate in relation to what is called the "admitted concurrence of the Attorney General in a maximum, agreed or fixed price" for Louisiana sugar; whether immunity from prosecutions under the statutes against profiteering had been, directly or indirectly, granted by the Attorney General; and what authority of law there was for the Attorney General's action.

I was under the impression, from a hurried reading of the rather voluminous testimony which has been taken before this committee at the previous meetings, that the committee was investigating also some other matters, relating particularly to the reasons for the failure to purchase the Cuban sugar crop and the responsibility therefor. I was not sure that there was not, possibly, some other resolution before the committee which was being considered——

Mr. HUSTED (interposing). No.

Attorney General PALMER (continuing). And which gave rise to that investigation and long discussion before the committee.

Mr. HUSTED. No; this is the only resolution before the committee.

Attorney General PALMER. Yes. I think, Mr. Chairman, that in order to do the general situation justice, it would not be improper for me, before I conclude, with the permission of the committee, to discuss the various matters which, however irrelevant, seem to have been taken up by the committee at its former meetings.

Mr. HUSTED. That is quite satisfactory.

Attorney General PALMER. And by that I do not mean, of course, any of the discussion which arose in the House at the time of the passage of this resolution. That discussion was characterized by considerable partisan feeling and showed evidences of partisan bitterness which were not calculated to elicit the truth and nothing but the truth, which I assume, is what this committee is after.

I am, of course, too old a hand, both at this end of the Avenue and at the other end, not to recognize that the injection of partisan feeling into a matter of this kind is a usual, if not a favorite, pastime at this particular season. I hope I shall not indulge in any of it myself, leaving to those who have seen fit to place this investigation upon that basis the responsibility for their own conduct.

With your permission, Mr. Chairman, and simply for the purpose of saving your time and mine, and not, of course, to evade any proper questioning by the committee, I would appreciate it if you would permit me to make a statement covering all the facts and circumstances relative to the matter concerning which you are investigating.

Mr. HUSTED. We will be very glad to have you do that; in fact, you are invited to do that.

Attorney General PALMER. Without interruption?

Mr. HUSTED. Yes.

Attorney General PALMER. And at the conclusion of that statement, of course, I shall be very glad to submit to any such questions as the committee desires to present.

In order properly to understand the attitude of the Department of Justice and the conduct of the Attorney General and the United States attorneys under his supervision and direction in this matter, it is necessary to go back to the time when the Lever Food Control Act was amended by act of Congress, providing a penalty for profiteering.

With me, this matter is and has been simply a matter of law enforcement; a matter of the proper method by which a law should be enforced which, by reason of its terms, by reason of its identified terms, I may say, is peculiarly difficult of enforcement. And in order that the committee may have the benefit of the attitude of the Department of Justice and of the Attorney General from the beginning, I want to call your attention to what was said at the hearing before the Committee on Agriculture of the House when this amendment was being considered by that committee.

The amendment was drafted by me. The President, in his message to Congress of August 8, 1919, had recommended that the food-control act should be amended so as to include wearing apparel among the necessities of life which were protected by that act, and that a penalty should be provided for profiteering, which was then made unlawful in section 4 of the act.

During the war that unlawful act was guarded against and punished by the use of the license system, which made it possible for the Food Administration, charged with the administration of that law, to effectively control profiteering. But with the failure of the appropriation for the Food Administration, the administration going out of business on the 1st of July, 1919, the license system fell with it; and we found ourselves with a statute against profiteering, but providing no penalty for a violation.

I accordingly drafted an amendment to the food-control act providing for a penalty for profiteering, and including wearing apparel, and some containers among the necessities of life protected by that act.

Obviously, Mr. Chairman, it would have been very much better if some system could have been devised which would have made the act against which Congress was proposing to legislate a crime very much more definitely and specifically defined. But we were in the midst of a serious situation. The cost of living had increased to the point where it was a serious burden upon the backs of the people. Prompt action, it seemed to us, had to be taken along some direction.

And my experience of some years as a Member of Congress taught me that the way to accomplish an expeditious and prompt change in the law was to make that change as slight as possible; that if we introduced into it a new system, or a complicated and comprehensive plan for executive price fixing, or anything of that sort, as a basis for the charge of profiteering, we would be met by long discussion and much debate in both Houses of Congress, and probably the evil against which we were trying to legislate would immensely increase in the meantime. As it was, this simple amendment which made a change of but a few words in the law, followed its slow and tortuous way through the two Houses of Congress, until October 22, from August until October, before it could be made into a law.

The committee tentatively did prepare a price-fixing plan, which I protested against, and which I urged the committee not to adopt, both on the ground that it was bad in policy and in principle to place upon the Executive the power to fix prices of the necessities of life, and also because it was impractical in its operation and impractical as a matter of legislation to accomplish the reform as soon as it was needed. I said it was impractical in operation, because it would require the rebuilding of the Food Administration, which was impossible.

Having thus objected to the plan of the Agricultural Committee which contemplated Executive price fixing, and having asked simply for a penalty against the charging of an unjust and an unreasonable rate, I was challenged, in effect, by the Committee on Agriculture to state how it would be possible to administer and enforce such a law as I was advocating.

I shall not take the time of the committee to read my entire answer to that challenge; but I think it vitally important, at the very beginning of this discussion to have this committee understand what the position of the Attorney General was at that time, in respect to the enforcement of this law which he expected that he would be called upon to enforce—in what terms he explained that to the Committee on Agriculture because, following that statement, the Committee on Agriculture adopted his view of what the law should be, and eliminated the proposed price-fixing plan which they had devised—following the suggestion of the Attorney General. And I assume, and I think it is a perfectly fair assumption, that the committee, and therefore the Congress, when it passed the law, had in mind that this rather vague, indefinite, and unusual form of criminal statute would be enforced in the manner which had been presented to the committee at the time it was suggested.

On page 78 of the hearings before the Committee on Agriculture of the House of Representatives, on the amendments proposed to the food-control act, August 15 and 20, 1919, there appears this report:

Attorney General PALMER. You do not in section 4 give the Executive the right to consider the fairness or unfairness of such prices. You declare what is unlawful; that is, the charging of unfair and discriminatory, and unjust and unreasonable rates; and that leaves it as a question of fact for the jury.

Let me tell you how we propose to operate that—and, to my mind, it is the only practicable method. There are two ways by which it could be done, I suppose. One is your suggestion—having a price fixed in advance by some Government agency; you say, by the President. That means by some great organization that will sweep the country from one end to the other, and have its accountants and investigators and bookkeepers and workers in every line of industry engaged in finding out how much is a fair price.

I think that is impracticable, because we can not build up that kind of an organization, and if you put it in the statute book, even as an alternative, we will be met by it at every corner road, and we will be criticized for not doing it that way, which will hurt the entire morale of the enforcement of your law.

The other method is this: When a man makes an unjust and unreasonable charge, or a discriminatory and unfair price, hale him into court.

And our method, or our proposition, to determine to the satisfaction of a jury what is a fair and reasonable price, is this: We have called upon the former State food administrators, not to organize their food administration, but simply to organize in the cities and counties fair-price committees, which we have asked to be composed of a wholesaler, a retailer, a representative of labor, representatives of housewives, and representatives of the general public.

Mr. YOUNG. Simply voluntary workers?

Attorney General PALMER. Voluntary workers for the purpose of dealing with the question of what is a just and reasonable profit in that particular community; a decentralized agency for the purpose of giving the public knowledge which would be reflected in a jury box when a man is brought before a jury upon the charge of charging an unreasonable or unjust rate. We have already secured the cooperation of 36 of the Federal food administrators, and we will have most of them; some have been delayed in accepting because they are away from home, or something of that kind.

These fair-price committees are being organized in all the larger cities and counties of the country, and they are making and will make investigations which will apply to that community only.

Now, their findings are not law; their findings do not fix the price. Their findings will simply present to us the same opportunity for gathering the evidence to show what is an unjust and unfair price for that article, and if we bring a man into court who has sold at a higher price than they have announced as a fair price we can produce

the same evidence that they had to convince a jury that that man is a profiteer, and if a committee of representative citizens of that character says that those men are profiteers they will not sell at that price in that community, or if they do the jury will convict them, because the same kind of sentiment will be represented in that kind of committee that is represented on a jury.

That is a voluntary organization, decentralized, and working in every State, city, and county in the country where we can get them, which will cost the Government nothing and be immediately operative to make this act effective.

I want to say, Mr. Chairman, that that sentence, the next to the last sentence that I have read, announced by me as the method of the enforcement of this law before this law was passed, has been throughout the guiding star which has marked the way for the district attorneys in every part of the country in the enforcement of this statute. It has been done with respect to all commodities; it has been done as a basis for the prosecution of hundreds and hundreds of profiteers. And if, by doing it, the Attorney General was guilty of an unlawful act in Louisiana, he was guilty likewise of hundreds of other unlawful acts in every part of the United States; and you need not stop in the investigation of my conduct with respect to this particular case, for the records of the Department of Justice are loaded with facts and circumstances which will give you plenty of room to find me guilty with reference to all the necessities of life in the enforcement of this statute.

The enforcement of the criminal law, Mr. Chairman, under the Federal statutes is put upon the United States attorneys in the eighty-odd districts of the United States. By statute also those district attorneys are under the general supervision and direction of the Attorney General, who thus becomes the chief prosecuting officer of the country.

In the enforcement of those statutes, as with respect to the enforcement of every right of the Government of the United States, for which the Attorney General is the chief counsel, there is and must be lodged somewhere a power and discretion to determine when, where, under what circumstances, against whom, and by what method prosecution shall take place.

Obviously, that discretion must be lodged in some official. It is lodged in the United States attorneys by law who, as I say, acting under the general supervision of the Attorney General decide, as it is their lawful duty to do, how and when and where and against whom prosecutions for offenses against the criminal law shall be undertaken. They have under the law and the decisions the fullest right to control matters of that sort. They may nol-pros, and the Attorney General may nol-pros, any prosecution at any stage of the proceedings before judgment. He may, even after judgment, upon appeal by the defendant, confess error, which amounts to the same thing. He or the district attorneys under him may withdraw a case from the jury at any time. They have the fullest discretion, power, and control over the criminal prosecutions of this Government—they must have. And their decisions with respect to what particular cases shall be prosecuted are final and lawful.

Now, what the Attorney General did through his district attorneys under his direction, when he announced and carried out the plan which I stated to the Committee on Agriculture would be carried out, was to exercise that discretion which the law laid upon him of determining in what cases he would bring his prosecutions, as in determining what was the basis of an alleged violation of this law which

would justify him in bringing and pressing a prosecution for its violation.

I do not care, Mr. Chairman, whether you call it a "fixed price" or an "agreed price" or a "maximum price." I do not care whether you call it an agreement on the part of the district attorney with the defendant that he would not prosecute in a certain event. If the district attorney announced a price, or if he concurred in the announcement by a dealer of a price as a fair price, which, in his judgment, was not a violation of the law, he was exercising his lawful discretion under the law; and neither he nor the Attorney General can be said to have committed an unlawful act. He may have been mistaken in his judgment; he may have been mistaken in the exercise of his discretion—although I have yet to find a single case where I believe any such mistake was made.

But for anybody to say that the doing of such an act was an unlawful thing exhibits a lamentable and sorry ignorance of the law, and of every decision of every court under the law in America.

Now, this act was passed, and the first time that the question of its operation arose with respect to sugar came in the latter part of October, when the question of the price of beet sugar and of a possible enforcement of the law against beet-sugar producers arose.

In the meantime, even before this act was passed, in accordance with the announcement which the Attorney General had made, fair-price committees were formed in various cities. A fair-price commissioner was named in three-quarters of the States, including the State of Louisiana, where Mr. John M. Parker, who had been the food administrator for that State under the Food Administration, was named as fair-price commissioner for the State. He did not, however, name any fair-price committees for his cities, or for his State, and before the sugar situation in Louisiana developed to any extent which called for action or advice to the Department of Justice on the part of a fair-price commissioner, or a fair-price committee, Mr. Parker had resigned that office, and we were without a fair-price commissioner in that State.

That situation had arisen in several other States, and to meet it we adopted the plan of requesting the United States attorney for the district to formulate voluntary committees of consumers and producers, of dealers, and other persons to advise with him with respect to the fair prices for necessary commodities in that district, as the fair-price committees named by fair-price commissioners in other States had done.

So that by the middle of October, in something like 30 States, there was a fair-price commissioner, with fair-price committees operating under him, and in the other 18 States there were district attorneys operating as a sort of fair-price commissioner, with informal committees in association with the district attorneys.

In the month of October, along about the middle of the month, this situation arose with respect to beet sugar: It had been produced in, I think, about the usual quantity—with about the usual crop. It was the time for it normally to come upon the market; it was ready, apparently, for distribution to the public in the beet-sugar States, extending from Ohio, through Michigan, Wisconsin, and the other sugar States, as far West, I think, as Colorado. It was not, however, coming out; it was not being sold to the public, and there was a well-defined and very serious scarcity of sugar in the country, resulting

obviously and necessarily in a high price being offered for that commodity.

We discovered that the beet-sugar people of the West were holding their stocks, chiefly because they did not know, and they had no way of knowing, whether, if they accepted the prices which were being offered to them in the market, they would be held by the Department of Justice as having violated the profiteering statute. Without knowledge of what would be considered in each of the districts a fair price, unwilling to run the risk of what a jury might say was a fair price, and therefore what was an unjust and unreasonable rate or charge, they were holding back their stocks. I think I might say with truth that they were, on the whole, a high class of law-abiding citizens, who had no desire to violate any law, certainly any criminal law, and who found themselves in a very difficult situation on account of this law, which by that time had passed both Houses of Congress and had been adopted by the conference, and was about to be signed by the President of the United States. Everybody knew he would sign it, because he had asked for it.

They faced this other difficulty, that while hesitating to put out their stocks, for fear that they might be prosecuted under this uncertain profiteering statute, they were also in danger of being prosecuted for hoarding, for storing a larger amount of sugar in their plants than was reasonably necessary for the conduct of their business. Thus these beet sugar people of the West were between the devil and the deep blue sea: If they kept their sugar in stock, they might be prosecuted for hoarding; if they let it out to the public, they might be prosecuted for profiteering; without any information from the Department of Justice, or the Government, as to what would be considered a fair price, they were in a difficult situation, and the public was suffering.

Now, Mr. Chairman, it seemed to me, considering that the Attorney General of the United States, the head of the law enforcing department of the Government, owed a duty, not only to the Government, but to all the people whom the Government was built to serve, including not only the general public who were interested in the production and distribution of sugar, but these very producers as well—that it became his duty to do the honest and the fair thing by these people and by the people as a whole.

I have never conceived it to be the duty of the Attorney General to endeavor to entrap citizens into a violation of a law. I have never conceived it to be the duty of the Government to take advantage of a situation which would make a criminal of an honest man, with honest intentions, with no desire to violate the law.

And so I asked the Sugar Equalization Board, which was then in existence, and which was the greatest authority upon this question of a governmental or semigovernmental nature in the country, to indicate to the Department of Justice, for the benefit of all parties, what would be a fair price for beet sugar. They had handled the crop the year before. They knew all the details and all the facts about its production and its expense of manufacture and distribution; and it seemed to me, as it would have seemed, I think, to any reasonable man, that that body was the logical body to give an indication of what was a fair price.

I could not adopt the system which I had planned and announced before the Committee on Agriculture with respect to beet sugar; I

could not ask a fair price committee formed under the direction of a fair price commissioner to announce a fair price, because it was not a product which was produced in any single community; it stretched from Ohio to Colorado. Conditions in the different States were somewhat different; and it was a great big, broad nation-wide problem with which we were dealing, and not one of local character which admitted of a decision by a local fair price committee.

The Sugar Equalization Board replied to my request; and after that reply was received, I sent to all of the beet sugar producers of the United States a telegram, under date of October 18, 1919, which I will read:

After thorough investigation by the recognized authorities on sugar, the United States Sugar Equalization Board have notified the Department of Justice of the following facts—

I now quote from the Sugar Equalization Board's statement:

As a considerable part of the country generally supplied at this time of the year with beet sugar may be embarrassed because of the beet sugar factories failure to sell beet sugar as produced and this condition in turn is due to the uncertainty regarding price our judgment is that no higher price than 10 cents cash less 2 per cent sea-board basis is justified, and we hope that you will decide at once to begin marketing your sugars on this basis and relieve the very serious situation. The price of 10½ cents net cash f. o. b. plant which has been offered by the Sugar Equalization Board for sugars in excess of requirements in your territory as shown by your 1917 deliveries as a minimum up to 50,000 tons or November and December shipment to relieve an acute shortage among the manufacturers East, is not to be considered a precedent or basis for local prices.

That is the end of the Sugar Equalization Board's statement. I then added in my telegram:

I ask you to make your announcement of prices based on the above. The Department of Justice will treat as an unjust charge any price in excess of this and consider such a charge a violation of section 4 of the Lever Food Control Act, as amended. Please wire to-day your concurrence in the above.

The result of that was that practically all of the beet-sugar manufacturers wired their concurrence in that announcement. Therefore, the beet-sugar people announced this price of, say, 10 cents; the Department of Justice concurred in its as a fair price; and the sugar went upon the market at that price. As a consequence, when sold by individual beet-sugar people at a higher price, prosecutions followed. When sold at that price, or under that price, no prosecutions followed. We did prosecute four or five of these beet-sugar people in Michigan, and I think also in Utah—shall I say violating that agreement? Possibly; but as a matter of fact, for selling at an unjust and unreasonable rate or charge, the Department of Justice deciding that it was unjust and unreasonable, and therefore justified us in bringing a prosecution, because it was higher than the price which the Sugar Equalization Board announced and which the department concurred in.

Now, to my view, Mr. Chairman, that was not fixing the price of sugar in the United States. There was no Executive price fixing about that. There was the exercise of the lawful duty and discretion on the part of the prosecuting officers of the Government in the announcement of what they considered to be a violation of this law, and in the decision with respect to prosecutions under this law—a discretion which was lodged by every statute and every decision of every court in the prosecuting officers.

That was on the 18th of October. On the 22d of October, the President signed this amended food control act. Publicity was given to this telegram sent by the Department of Justice to the beet-sugar people. And the first consequence of that publicity that I discerned was a visit to me by representatives of the Louisiana sugar growers. They came to Washington and stated that they had seen our announcement that 10 cents or 10½ cents, would be considered a fair price of beet sugar; that if we were to apply that to Louisiana sugars, and they were to sell their sugar at that price, they would be ruined. They explained to me that the crop was somewhere between one-third and one-half of a crop; that its sucrose content was very much less than it had been in many years; that in every respect the crop was so largely a failure that a price very much higher than 10 cents or 10½ cents would have to be charged for Louisiana sugar. I do not recall that they stated any price which they thought would be a fair price at that time; but they said they had been in conference with the Sugar Equalization Board in some effort to get the board to take their crop.

I made this concrete suggestion to them, I recall: That they should go back to the Sugar Equalization Board and say that they would sell their crop at a price that they would be able to agree upon, and suggest that the Sugar Equalization Board should increase the price of its remaining stock of Cuban sugars then on hand by 1 cent a pound. I think they had still 400,000 tons. And this increase would absorb the extra price which they would be required to pay to the Louisiana producers for their sugar and make it possible for the sugar to go to the country at only 1 cent above the price which they were then charging for the Cuban sugars.

The committee left me, went to New York and visited the Sugar Equalization Board the next day; and it was reported to me that the Sugar Equalization Board either refused to enter into that arrangement, or said they could not do so. Anyhow, it was not done.

And these producers then went back to Louisiana. They had shown to me during their visit that at that time they were receiving offers of 19, 20, 21 and 22 cents for their sugar. They showed to me contracts which had actually been executed by some of the sugar producers or refiners in Louisiana by which their sugar was sold at that price. They told me of inquiries from manufacturers—candy manufacturers and other consumers of sugar—asking for sugar from New Orleans, without regard to price; and they reported to me also what was then the prevailing quoted market price in New Orleans.

They went back from Washington to Louisiana without any decision on our part as to what the Department of Justice would consider a fair price.

And soon after that, when the time became imminent for the sugar to go upon the market, there was considerable correspondence between our office and our United States attorney at New Orleans with respect to the method which should be adopted in the prosecution of persons who might be guilty of a violation of this profiteering statute.

Some of that correspondence has been presented here; some of it has been read to you. Single sentences have been taken from the context, and have been commented upon, as if it were an executive price fixing on the part of the Department of Justice.

I want to read to you, Mr. Chairman, absolutely, all—every word—of the correspondence between the Department of Justice at Washington and its representative in Louisiana, Mr. Mooney, the United States attorney, in order that you may judge of what was done, not by a single sentence, but by the entire correspondence, and by all of the facts and circumstances surrounding the thing.

Mr. HUSTED. Is that correspondence fully set forth in House Document No. 644?

Attorney General PALMER. What is that? Is it my answer to that resolution?

Mr. HUSTED. Yes.

Attorney General PALMER. No; there are only a couple of telegrams there, I think.

The first is a letter of October 29, 1919, signed by Howard Figg, special assistant to the Attorney General, and addressed to Henry Mooney, Esq., United States attorney, New Orleans, La., and reads as follows:

We have made every effort possible to reach an agreement with the Louisiana producers and refiners to establish a fair price on the present crop sugars. Certain efforts were made for the purchase of the entire crop with the hope of equalizing price for the entire United States and the loss being absorbed by the Sugar Equalization Board, but no agreement was reached with them. They have made the statement that 14 to 15 cents will allow them a margin of profit. Prices in excess of that amount should immediately be investigated and they should be called before you and asked to justify this price. It is very possible that prosecutions will have to be started against some of these operators, but use every method possible first to bring them to an equitable agreement.

Keep us posted as to the progress being made and what your view of the general situation is.

On October 30, 1919, the next day, this letter was written by Mr. Figg to Mr. Mooney:

I have to-day had a conference with Senators Gay and Ransdell and Congressman Martin of your State in reference to the sugar situation there. They are most anxious for the sugar situation to be so arranged in Louisiana as to in no way come in conflict with this department. To the suggestion that an equitable and fair price might be arrived at between the producers and your office, these gentlemen thought that it was both feasible and possible.

I am informed that a committee was appointed at a general meeting of the producers held in New Orleans on the 28th of this month, with authority to negotiate with the equalization board for the sale of the entire Louisiana crop, and I would suggest that you get in touch with this committee with the view of reaching some agreement as to price.

Former Senators Guion and Foster were suggested as well qualified to assist and advise you in this matter.

I am disposed to think a price from 14 to 15 cents will be fair, but this could be determined after getting facts and figures from the producers. There will be some protest even on this price, as in a small portion of the sugar section I understand that the growers would not break even at 20 cents, but the large majority would make a reasonable profit on the lesser price and that is the one you will have to consider. By the stabilization of this price it will allow you to base your action for future prosecutions on prices in excess of this agreed price. It will relieve your office as well as ours of considering the innumerable protests now coming in as to the wide variation of prices being asked for Louisiana sugars. There are certain existing contracts which, in my opinion, where they are bona fide written contracts, you should insist upon being filled. I call your attention to section — of the food-control act which very clearly states the necessity for the fulfillment of all existing contracts.

This committee will call upon you in a few days and arrange a definite date for a hearing. Please keep us fully posted as to progress being made. This question is a very large one and one that must be settled so that a stabilization of price may be established for the entire United States, largely based upon your agreement with Louisiana sugar interests.

one member of the committee originally consenting to the 17 cents suggestion. All other members holding for a higher price because of the admitted short crop and low sugar yield. Stating in this connection that such cane as had passed through the mill showed an unusually poor yield of sugar making estimates of production made a week ago high and indicates losses to many even at price agreed.

I have sought the very best sources of advice in this matter and have reached the conclusion that the 17 cents agreed upon is reasonable, and recommend that the department accept it. I have reached this conclusion because 17 cents as a maximum price does not carry with it any guarantee that the entire crop can be disposed of at that figure, and it is probable that the average for the crop would be considerably less. I have before me your telegram of the 6th referring to willingness of conference committee to accept 14 or 15 cents as price for entire crop. I had this fact in mind when I wired you November 3, but as Government is not in a position to guarantee the producer any fixed price for his crop and is necessarily limited to establishing a fair price, which virtually means maximum price it would be impossible to secure consent of planters to fix the fair average price as a maximum price because of the vast difference existing between maximum price and average price for crop. I believe the action of the planters yesterday represents the extreme limit of their concessions although they met me in a conciliatory spirit. Sincerely hope that maximum price suggested may be acceptable to the department. Please instruct me by wire.

To that telegram the Attorney General replied—well, I do not know that it was a reply. My copy of this next telegram is dated November 6, from the Attorney General to Mooney:

Consider 17 cents unreasonable. Conference committee here recently indicated 14 or 15 cents would purchase entire crop. Statement made that profit could be realized at that figure. Open market Louisiana sugar will and is causing the breaking up of stabilization plan for entire country.

That is signed "Palmer."

On November 8, 1919, this telegram from the Attorney General to the United States attorney:

Your wire 8th detailing result of conference; consider agreed price rather high, but hereby concur in maximum fixed price of 17 cents for Louisiana plantation clarified; 18 cents for Louisiana clear granulated; understanding that all contracts for a higher figure to be abrogated; further suggest if possible you secure an agreement in writing by authorized committee of Louisiana producers and refiners to be used as prima facie evidence where prices are charged in excess of agreement. You are hereby instructed to immediately prosecute any violator of this agreed price.

That telegram is signed "Palmer."

On November 10, this telegram from the Attorney General to the United States attorney at New Orleans, La.:

Reset replying to your telegram immediately investigate American sugar refinery holdings and libel if facts warrant.

PALMER.

On December 4, this telegram was sent from the Attorney General to Mr. Mooney:

The following telegram has been sent to all other United States attorneys: "The department in previously indicating reasonable price for sugar was guided largely by opinions of Equalization Board as this board soon goes out of existence and as due to widely differing conditions; refining costs vary; no fixed price can be set as reasonable; every sale must be treated on its own merits and where there is evidence showing an unreasonable profit or the withholding of sugar from the normal consumption channels or unfair discrimination in price as between manufacturers and wholesalers supplying retail trade you are directed to institute proceedings under the food control act the same policy applies to wholesalers." The general principles stated, of course, apply to your district, but in view of fact that 17 and 18 cent price as proposed by Louisiana interests was considered maximum reasonable price and as highest in country; assume that above principle would not allow higher price as to wholesalers' margin. Deal in accordance with above telegram.

PALMER.

Now, Mr. Chairman, what does all of that amount to? It amounts to this, that there having been no fair-price committee appointed in the State of Louisiana, because of Mr. (now Gov.) Parker's resignation; and the United States attorney having been directed, therefore, as in all other cases, to associate with himself voluntary advisers drawn from the ranks of those who usually contributed to the membership of fair-price committees, when this question arose he consulted and advised with representatives of the producers, representatives of the consumers, and the general public as represented by two distinguished citizens of high character and great ability, former Senators Foster and Guion. Those gentlemen were selected, as I understand it, because they were known to the entire State as being fair men of good judgment and splendid character. One of them had been for years a prosecuting attorney, a judge upon the bench, and governor of his State twice, and a United States Senator. The other had been a judge and a United States Senator, and both of them lived in the sugar district—in New Orleans—and were familiar with the sugar situation; and neither of them was a sugar producer. I think it did develop afterwards that one of them had a very small and negligible interest in some company that was interested in sugar. But they were fair representatives of the general public.

So that after conference—informal in character, to be sure—with consumers, producers, and the public a price of 17 cents was arrived at, which, in the judgment of the district attorney—and that judgment was approved, though reluctantly approved, by the Attorney General—was a fair price for Louisiana sugar, in view of all the circumstances. And though the announcement was not made, it was plainly understood that in the exercise of its lawful discretion the Department of Justice would not prosecute persons who sold the sugar for 17 cents or less, and as Mr. Mooney reports to the Attorney General his understanding of his instructions and of the position of the department, if sugar was sold for a higher price, investigation would be made and prosecutions would result if it showed that an unreasonable profit had been made. But even as to a higher price, if no unreasonable or unjust rate had been charged, no prosecution would have resulted.

Mr. HUSTED. Well, was there not some sort of agreement with the planters that any higher price would be considered an unreasonable and unfair price?

Attorney General PALMER. Nothing at all.

Mr. HUSTED. I think something of that kind is referred to in the telegram.

Attorney General PALMER. Yes; there was a telegram from the Department of Justice to Mr. Mooney, asking if an agreement could not be made which could be used as evidence of a fair price. No such agreement was ever made, except as it appears and results from the fact that the Sugar Cane Growers' Association, which is an incorporated institution composed of all the sugar producers in Louisiana, passed a formal resolution, naming that as a fair price, and the Department of Justice acquiesced in it.

Mr. HUSTED. I suppose that would not be received in court as evidence of an agreement?

Attorney General PALMER. Well, I think that the fact that the resolution was passed and that the representative of the Department of Justice acquiesced in it, might be received in court as evidence,

as an agreement might be received in evidence, as to what was considered at the time by the producers as a fair price, if one of the persons who was a party to that resolution, a member of the association, was being prosecuted in court charged with profiteering under the statute.

But if received at all, Mr. Chairman, it would simply be as a part of the Government's case. It would, of itself, convict a defendant of nothing, of course; because, after all, nothing that the Attorney General may do, and nothing that a district attorney may do or say, in letter or telegram or communication, to a defendant, or to anybody else, as to what will be considered a *prima facie* case, can change the law; or the rules of evidence as laid down by every court in the country; and we knew, and Mr. Mooney understood, because his correspondence shows it plainly, that any and every case would have to stand upon its own bottom. The only object in announcing a price, which, in the opinion of the Department of Justice, in the exercise of its discretion would not justify prosecution, was to make it possible for honest men to continue to do their business, without danger of being subjected to prosecution for crime.

And it is the kind of thing, Mr. Chairman, that is done, and has been done, every day in the enforcement of this statute. It must be done every day, if we are to give the statute effective enforcement.

For instance, the fair-price committee in every city of the country—Boston, New York, Philadelphia, Baltimore, Washington, Chicago, and all the great cities, was at that very time publishing in the local newspapers a list of what it considered to be fair prices for commodities in that community. That was the judgment of a fair-price committee appointed by the Attorney General, for the purpose of announcing to the community what, in view of all the facts and circumstances, seemed to be a just and reasonable price on those commodities.

Why? As I said to the Committee on Agriculture, for two reasons:

First, to give the people themselves a weapon of self-protection by which, when armed with knowledge of what, in the opinion of representative men in the community, was a fair price for the commodity, they could go to a dealer, and if he charged them more than that, they could say to him, "We will not pay it, because in the opinion of this community it is too much." It gave them that weapon of knowledge of what was a fair price in that community.

And it was for this second purpose, announced when this law was being considered—a part of the very purpose in framing and passing this law—that it made it possible, if the price announced by the various fair-price committees was exceeded by a dealer, for the Department of Justice to dump into the lap of a jury the same evidence which convinced the representative men upon the fair-price committee; and we worked upon the assumption that that evidence would likewise convince the representative men in a jury box in that community and that a conviction would follow.

The psychology of it was that the dealer knew that the jury would take the same position as a fair-price committee. The dealer knew that, if he exceeded that price, he was up against the sentiment of his community, and that sentiment would be reflected in the jury box, as it was reflected in the fair-price committee. And he did not

exceed these prices. And that was done, I say, in every city of the country.

Can it be said that I fixed the price of meat in New York—or of any other commodity in any city of the country—because these fair-price committees, under my direction, made that announcement and made it possible for the Department of Justice to use in a trial the very facts which they established? Can it be that that was the fixation of prices because the dealers, out of the considerations that I have mentioned, acceded to them and did not run the risk of prosecution by the Department of Justice because they exceeded those prices? No reasonable man, unless he has bitter, partisan hate in his heart, would ever say that such an action on the part of these fair-price committees, or of the Attorney General, was a price fixation on their part or his.

Why, in Philadelphia, there is one instance—and I could stand here by the hour and recite what we have done in the way of keeping prices down in all of these communities. For that was what this campaign was about. That is what this law was passed for—to reduce, if possible, the high cost of the necessities of life. I could recite, as I say, hundreds of instances where that result was obtained in that way. Let me just name one, as an illustration of the rest:

In Philadelphia, there was a great furor about the prices of wearing apparel—as there is everywhere else, so far as that is concerned. And the fair-price committee of that community made an investigation of the wholesale prices, the dealers' margin of profit, and the retailers' prices in men's and women's wearing apparel in that city.

As a result of their investigations, they went to the great stores of Philadelphia, the big department stores and other stores dealing in wearing apparel, and said that, in their judgment, representing the judgment of the community, a certain margin of profit was all that they ought to charge under the circumstances, and that a certain price for men's wearing apparel of a certain character was a fair and just price, and anything more would be considered unjust and unreasonable.

Did the Attorney General fix the price of men's wearing apparel in Philadelphia by that act? Not at all. What he did, through his agents, was to tell those persons that, in the exercise of his duty in the enforcement of this law, he would instruct the district attorneys to bring action in any cases where the price was above a certain amount and that we would try it out before a jury. If they wanted to obviate the risk and expense and annoyance of that kind of prosecution, they had opportunity to conform to the prices which he suggested.

Now, that was done in Philadelphia, as I say, with respect to wearing apparel; and it was done throughout the country, in city after city and State after State, with respect to all the necessary commodities covered by this act. It was the only practicable way to do this thing, Mr. Chairman. More than that, it was the only honest, fair and American way to enforce this statute.

The distinguished gentleman from Massachusetts, I gather from his testimony, has never had very much experience as a prosecuting officer, or he would not have made the absurd and ridiculous suggestion that the way to enforce this statute in the interest of the people was to bring a test case in a criminal court, in

order to determine what a fair price might be, and then have the Department of Justice accept that price fixed by the jury as the price which it would enforce thereafter. And he used the rather unfortunate illustration of the method pursued by the Government in the prosecution of cases under the Sherman antitrust law.

Well, Mr. Chairman, if it had taken one-half the time to work out a test case in Louisiana to fix the price of sugar that it has taken to work out a test case under the Sherman antitrust law, the people would have suffered untold millions of dollars of added expense to their cost of living while the experiment was being tried. For the case in which the decision was recently handed down by the Supreme Court—this very week; on Monday of this week—was a case that was tried in the courts below six years ago and which was begun—I do not know when—but nine or ten years ago, I think.

Is that the remedy which the gentleman from Massachusetts would seriously offer in the enforcement of a statute passed by Congress in relief, or in the hope of relief, of an intolerable situation growing out of the cost of living?

This sugar was ready for the market, Mr. Chairman. If we had brought a single prosecution in November we could not have hoped to reach trial with that case—the first trial with that case—before the entire sugar crop of Louisiana had been distributed in the United States; it was all off the market by January. One-fortieth of the entire demands of America, produced in Louisiana, are consumed in a couple of months; it always has been, and was this year.

So that one of two things would have happened while we were waiting for the result of a single criminal case: The Louisiana producers would have held their sugar because they did not want to run the risk of violating the profiteering statute, which they might have done with the people of the country clamoring for sugar, and offering them any price that they could think of, regardless of the facts, and thus they would be hoarding their sugar and refusing to give it to the people. Or else they would have sold it at these fancy prices and have run the risk. And as a practical proposition, Mr. Chairman, I have not the slightest doubt that they would have sold their crop in what they called the open market, without any strings as to price whatever, and run the chance. Because I doubt also, as a practical proposition, as you gentlemen must, if you would have found a jury of 12 men in Louisiana to convict a single one of them under this statute. Now, that is the situation that we faced as a practical proposition. Worse than that, Mr. Chairman, we faced the possibility of prosecuting under a statute which court after court has refused to sustain. Five district courts in the United States already have refused to allow any convictions in their courts, because of its uncertain and indefinite and vague character. I think they are wrong about that; but I can readily see how, in Louisiana, there would have been, under all the circumstances, little hope of getting by a court and jury with a prosecution of this character.

Was it the duty of the Attorney General to consider these things? I think so. I refuse to believe that the United States Attorney General is a mere prosecutor of criminals. I refuse to subscribe to the doctrine that he is a detective and a prosecutor only. He is the general counsel for the Government and the people whom the Government was built to serve; and it was his duty to do that which was in the general interest of the people, the Government, and

defendants in prospective lawsuits, as well as the general public. He had to consider these things.

Now, when we took that position; when we announced, after consultation with consumers and producers and the public, that 17 cents would be considered by us a fair price; when I took the responsibility which the law laid upon me, of saying that I would prosecute persons who sold above that price and try to convict them—even if I said, which I did not say in words, that we would not prosecute men who charged less than that price—when we took that position, we released the Louisiana sugar to the market at a less price, by many millions of dollars in the total, than otherwise it would have been charged for to the American public.

We allowed no guilty man to escape on any charge of profiteering; and we did not subject the innocent man to any of the annoyances of a trial in court under a criminal statute. We did our duty, it seems to me, to the public interested as consumers and to the defendants, or possible, or potential defendants in these criminal cases.

And let me remind you, sir, that it is the duty of a prosecuting officer, not alone to consider the interests of the Government and of the prosecution side of the controversy in every criminal case, but it is his duty, under every decision that I have ever seen, to consider also the rights of the individuals who may be brought into court as defendants.

I would have hated myself, Mr. Chairman, and I would have despised the methods pursued by this great, free Government of ours, if, having determined in my heart, that 17 cents was a fair price, I had held it locked in my own bosom and refused to tell the public in Louisiana that that was what the Department of Justice would hold.

I can not believe that the United States proposes to move on any such principle as that. Certainly it never will while I am Attorney General of the United States.

Mr. Chairman, that is this story. I have no regret for the action that was taken by the Attorney General; and I have no apology to offer for it. I shall repeat it, on all proper occasions in the enforcement of this statute—with all respect for the difference of opinion on the part of gentlemen in the Congress of the United States, who differ from me in many other things, as well as this.

Now, one word more. A great deal was said by witnesses, and a great many questions were asked by members of this committee at former hearings which were irrelevant to the language of this resolution, but quite relevant, I think, to its underlying purpose.

And they were questions and answers designed to fix the responsibility for the high price of sugar in the country, and for the failure to buy the Cuban sugar crop. I do not think we get very far in this familiar Washington pastime of "passing the buck." It is an old practice in the Capital City; and the public is not often deceived; the facts generally speak for themselves, in very plain terms.

It has been said—I think the extravagant statement has even been made that this action of mine, in announcing in Louisiana that I would not prosecute persons who sold their sugar for 17 cents and less, cost the American people—\$900,000,000, was it—maybe more—in the price of sugar? It might as well have been more, if you say anything, and it would be very difficult, I take it, to prove it. As a matter of fact, in my judgment—it is a mere matter of opinion, as

Mr. Zabriskie has said, and as Mr. Glasgow has said—in my judgment, it saved the American people money, how much, I can not say. I am as well satisfied as I am of the fact that I am standing on my legs at this moment that, if this action had not been taken, Louisiana sugar would have brought upwards of 22 cents in the market at that time. They could have sold it for any price they had seen fit to sell it for; there is no question about that in the world. There were manufacturers in all parts of the country who were telegraphing to Louisiana, "Send us sugar. We will not say anything about the price."

Mr. HUSTED. That did not have anything to do with the Lever Act, did it?

Attorney General PALMER. Well, it had——

Mr. HUSTED (interposing). In other words, the Lever Act was not concerned with open market values?

Attorney General PALMER. No; but it had a great deal to do with the price that the American people had to pay for Louisiana sugar.

Mr. HUSTED. Yes.

Attorney General PALMER. If they had sold it for any price that they had seen fit, the public would have paid that price.

Mr. HUSTED. But, of course, it was your duty to see that they did not sell it at more than a fair and reasonable profit on the cost of production?

Attorney General PALMER. It was my duty to prosecute them if they did. I could not enjoin them from doing that; I could hardly do that. The only way I could do anything was by an announcement of the character of that which I made; and that is what I say, that by that announcement I saved the country from paying those excessive prices which the Louisiana producers would have received for their sugar in the open market.

Now, it is alleged that, because that price was fixed at 17 cents for Louisiana sugar, it inspired the cupidity of the Cuban sugar producer, which resulted in Cuban sugar being sold at very much higher prices.

I am not an expert on sugar, and, of course, I can guess as well as anybody else what effect that may have had upon the mind of the Cuban producers. But I am willing to accept the judgment of Mr. Zabriskie, who has had more to do with sugar than anybody I know of in the United States, and who gave it to this committee as his opinion that the Louisiana sugar would have brought more money if I had not taken this action, and that the higher prices which it would have brought would have had more effect upon the Cuban prices than the fixing of anything like 17 cents. I have no doubt he is entirely correct; because, after all, Mr. Chairman, it is not this price of 17 cents which has made the price of sugar what it is; it is the conditions that obtain in the sugar market of the world. We have a short crop and an unusual and an abnormal demand.

Mr. HUSTED. As a matter of fact, Mr. Attorney General, Mr. Zabriskie said that the action which you took stimulated the Cuban market and increased the price of sugar to the American consumer.

Attorney General PALMER. What Mr. Zabriskie said was this: Mr. Sumners asked him the question:

Mr. SUMNERS. Now, then, if the Cuban, who was not under the control of this Government from any sort of an angle, had seen that the American crop was going

up—was already selling at from 15 to 21 cents and was going up—would that have had a psychological effect on him with regard to the price he would ask for his crop?

Mr. ZABRISKIE. I think so. I think that is all there is to it.

Mr. SUMNERS. The psychological effect. Don't you think the psychological effect of sugar bringing 21 cents and going up would have had a greater psychological effect than the action on the part of the Attorney General preventing it going about 17 cents?

That is just the question. Mr. Zabriskie said, "It would."

Mr. HUSTED. Well, in another part of his testimony, in reply to a direct question—

Attorney General PALMER (interposing). Well, that is as direct as anything I can think of.

Mr. HUSTED (continuing). He stated that your action did increase the price of sugar to the American consumer.

Attorney General PALMER. Well, I wanted to quote Mr. Zabriskie, whom I do not know personally, whom I do not think I ever saw, but whom I regard, by reason of his experience, as being best qualified to express an opinion—and it was merely an opinion after all. Whatever he may have said elsewhere, Mr. Chairman, he certainly said that, and he certainly was right about it, in my judgment.

Now, there was discussion before the committee also as to the responsibility for the failure to buy the Cuban sugar crop. I do not care to go into that thing at any length; it is not a part of my business. It is not necessary for me to defend the President of the United States. He is fully capable of taking care of himself; and it seems to me that an inquiry directed to the proper source would undoubtedly get the real reason for his failure to make reply to the memorandum which the Sugar Equalization Board submitted to him.

I do not want to engage in any bandying about of accusations as to who was responsible. I simply want to submit the thought to you, Mr. Chairman, and to have it placed upon the record: That when the Sugar Equalization Board submitted its letter and memorandum to the President and stated that it believed that it would be wise, as a commercial proposition, to buy the Cuban sugar crop and handle it in much the same way as it had been handled the year before, both as to producers and refiners, it had in mind what Mr. Glasgow, in his hearings before the Committee on Agriculture and here, said it had in mind. Mr. Glasgow, in one place in the hearings before the Senate committee, said that in the memorandum submitted to the President the Sugar Equalization Board declared that it could not purchase the Cuban crop, unless it had the right to distribute it under the license system.

They did not say that in words, but they said it in the language which I have just used, that they proposed to handle it in the same way it had been handled the year before. Mr. Glasgow and Mr. Zabriskie said, time and time again, when in October they were called before the committee of the Senate, that if the President had replied that as a matter of policy he would advise the purchase of the crop they would not have done it and could not have done it unless legislation had been passed which gave them the power of controlling the distribution by the license system.

Now this seems to have been overlooked in all this discussion, Mr. Chairman, that when the President had received that letter from the Sugar Equalization Board, when he had it in hand, containing as it did the suggestion that they should purchase the crop and handle it as they had the year before, which would require legislation, it seems to have been overlooked that before that time the

President had asked for that legislation specifically. In his message of August 8, he requested the Congress to pass a law extending by a certain definite period the Lever Control Act, which was exactly what the Sugar Equalization Board afterwards asked the committee to do. The uncertainties of its expiration, because it expired with the peace, and then peace was generally presumed to be nearer than it has turned out to be—the uncertainties of its expiration made it necessary for them to know, to a definite certainty, just how long they could operate. And all they asked for was a continuation of the powers given to them, or to the President, by the Lever Food Control Act, and the President had asked the Congress for it.

Mr. Tinkham, the distinguished gentleman from Massachusetts who first started the investigation of this sugar business in June, was familiar with the problem and its various aspects when the President made this request of Congress and everybody knew what its purpose and design were. Yet I submit, Mr. Chairman, that the President could hardly have been expected to make any announcement as to whether he would purchase the crop, when the Sugar Equalization Board had told him "Of course we would not do it unless we have the old conditions" and the President had asked for those conditions and his request had been ignored. It was not until October that it was even considered, and I came down to the Congress and presented another bill, after having waited two months for some action, in which I proposed to extend the Lever Act Control for six months following the war. That bill was presented by me to the Committee on Agriculture and, so far as I know, that is as far as it ever got in the House of Representatives.

If that bill had been passed in October by both Houses and signed by the President, so that it had been a law, the Cuban crop could and would have been bought. That all seems to me so plain that I am sick and tired of these partisan accusations made by gentlemen with little knowledge of the facts, alleging that the President's failure to answer this letter is responsible for the soaring prices of sugar—accusations which have been made, not only before this committee but which seem to be repeated with great gusto and much eclat in every newspaper every morning, whose reporters will listen to the gentlemen.

I think I have nothing further to say, Mr. Chairman.

Mr. HUSTED. General, I know that in controlling the price of sugar in the Northwest you consulted the Sugar Equalization Board as to what their opinion was about it, what they thought would be a fair and reasonable price to charge, and that they told you 10 cents, and that you acted upon their suggestion in communicating with the producers of beet sugar; in other words, you did not take the matter up with them in the first instance; you went to the body vested by law with authority to act in these matters. I suppose that you thought they were the best source of information—naturally so; you went to them and got their opinion, and then you communicated with the beet-sugar people and told them that you considered that a fair and reasonable price and practically demanded their concurrence in it.

Attorney General PALMER. I urged their concurrence.

Mr. HUSTED. Yes. But you did not take the matter up with them, the matter of arriving at a fair and reasonable price. Now, in the case of the Louisiana people you apparently did not pursue that

course. You state that there was not any price board there, due to the resignation of Mr. John A. Parker before appointing any of his boards; but your representative, Mr. Mooney, took the matter up with the producers themselves—also with the consumers, but particularly with the board representing the interested parties—and I notice all through the correspondence between yourself and Mr. Mooney the expressions “amicable agreement” and “amicable adjustment” with these producers. Now, why was it that the Louisiana people were apparently treated so much more gently and kindly than the beet sugar people in the Northwest?

Attorney General PALMER. They were not. They were both treated exactly alike and the method pursued in each case, so far as I was able to control, it was exactly the same in each case. What I mean by that is this, sir, that before this correspondence opened between our office and Mr. Mooney I endeavored to get the Sugar Equalization Board to give me the benefit of their opinion in exactly the same way as they had in the beet case.

Mr. HUSTED. You did not consult Mr. Zabriskie about it?

Attorney General PALMER. The board; I have forgotten just who was consulted.

Mr. HUSTED. Was there any writing?

Attorney General PALMER. I do not know.

Mr. HUSTED. Did you address any communication to them?

Attorney General PALMER. I can not say; I do not know.

Mr. HUSTED. You do not know who consulted them?

Attorney General PALMER. It was done under my direction by my people. And the reply that came back to me was the conditions in Louisiana were not only local but they were seasonal; that is to say, they were conditions arising that year only, and the knowledge they had of last year's situation was not sufficient for them to name any such price. Anyhow, they would not do it. Subsequently, and I think in the testimony here before this committee he repeated it, Mr. Zabriskie did say that 17 cents was a fair price.

Now, as to not consulting with the beet sugar people, I had long sessions with them. Upon sending that telegram, the most of them replied they would concur in it and they began to send sugar out at that price. Immediately sugar prices went up considerably. There was still a great deal of demand for it. The reports of failures of certain kinds, whose details I can not now recall, in the beet sugar crop, were being presented to the producers and they sent their committees to me for the purpose of modifying this price, which we did after fuller and further investigation. We named, I think, 11 cents or 11½ cents, and an even different price for Michigan sugar. I do not know—of course I did not do all this myself, Mr. Chairman—

Mr. HUSTED. No, of course not.

Attorney General PALMER. So that I may be a little inaccurate about that; but I am of the opinion (I thought I had an assistant with me who could tell me), my recollection is, we made a different price for Michigan than we did in the other Western States, on account of the peculiar local conditions—I think so—after conference with the producers, just as we had done in Louisiana.

Mr. HUSTED. You say you made a difference in price as between Michigan beet-sugar producers and other producers in other States in the beet-producing section?

Attorney General PALMER. That is my recollection, on account of some local conditions producing a high priced product which was paid for on a different basis.

Mr. HUSTED. I suppose, of course, you realize that the cost of production of the 1920 crop in Louisiana varied by extreme wide margins in different sections of the State?

Attorney General PALMER. I think it did, probably.

Mr. HUSTED. That is, the agricultural report shows, in some parts of the State—

Attorney General PALMER. Yes.

Mr. HUSTED (continuing). The crop was injured about 20 per cent.

Attorney General PALMER. So it did in Michigan.

Mr. HUSTED. And in other parts of the State about 80 per cent; fully 80 per cent?

Attorney General PALMER. That is true everywhere in every field, Mr. Chairman.

Mr. HUSTED. Now why was it not practicable in Louisiana, in view of those very wide variations, to fix a margin of profit at a certain number of cents, say, or whatever might be fair and reasonable, over and above the cost of production, so that it would not be possible in Louisiana, as it would be under a fixed price—fixed general average price—for some man to make excessively high profits, grossly exorbitant profits, while other men possibly made only a small profit?

Attorney General PALMER. The law does not say that the making of an unjust profit is a crime; but the charging of an unjust and unreasonable price is a crime.

Mr. HUSTED. Yes; but in your construction of the Lever Act, does not that mean a fair and reasonable price based upon a reasonable profit?

Attorney General PALMER. Yes.

Mr. HUSTED. Based on a reasonable profit over and above the cost of production?

Attorney General PALMER. I think so; yes, sir.

Mr. HUSTED. So that it really amounts to the same thing?

Attorney General PALMER. Possibly. Of course, the first result of that would have been a very much higher price for Louisiana sugar, because, as it turns out, none of them made any profit at 17 cents. They would have—many of the producers would have sold at 20, 22, and 25 cents. A producer who had a very bad year and who got little or no sugar, and still had his overhead expense would have gotten any price he asked. It would have resulted in the people paying more for their sugar, Mr. Chairman. That is the first thing it would have done, and it certainly seems to me that that is a fair method.

Sugar is not the kind of a thing that the public would have any patience with if it sold in one place for 10 cents and in another for 25 cents. This difference in price between beet sugar and Louisiana sugar was hard enough to get by with and if it had been any larger it would have been very much more difficult to handle. We tried to handle it by persuading the purchasers in the southern field to buy the Louisiana sugar only and let them swelter in their own high prices down South. How far we accomplished that I am not certain.

Mr. HUSTED. I notice by the official record, in 1917, the cost of producing sugar by the factories varied from fifty-odd dollars per ton up to as high as one hundred and sixty-odd dollars a ton.

Attorney General PALMER. But the price was pretty uniform.

Mr. HUSTED. That was away back in 1917.

Attorney General PALMER. But the price was pretty uniform. That is what our people had been accustomed to.

Mr. HUSTED. Now, of course, it was very vital, as you must admit, to the American public, whether the price of sugar was fixed at 17 to 18 cents or at 15 to 16 cents. In other words, the difference of a cent a pound or two cents a pound, even on the comparatively small Louisiana crop, made a difference of many millions of dollars to the consuming public.

Attorney General PALMER. There was but about 100,000 tons, I think, approximately, in Louisiana.

Mr. HUSTED. 100,000 tons, and a difference of two cents would have made a difference alone to the consuming public of \$4,000,000.

Attorney General PALMER. I am not quick at mental arithmetic.

Mr. HUSTED. Every cent per pound additional on a yield, even as small as the Louisiana yield, amounted to a lot of money. Now, what I want to get at is this: That being the fact, of course it was very important to go carefully into the costs of production in order to find out what the fair and reasonable price was?

Attorney General PALMER. Yes.

Mr. HUSTED. And I would like to have you tell the committee, if you will, just what was done in that regard, in order to find out from reliable records what the cost of production was in Louisiana of the 1920 crop and, consequently, what was a fair and reasonable price.

Attorney General PALMER. As I understand it, Mr. Chairman, the committee of producers which met with Mr. Mooney gave him their figures of their costs of production, all their cost sheets, and it was upon those cost sheets that this price was arrived at after conference with the two ex-Senators and consumers. That that was well done is borne out by the developments. I requested Mr. Mooney to require the largest producers, many producers, to submit their cost sheets to this committee and they are here.

Mr. HUSTED. I am very glad of that.

Attorney General PALMER. They will be shown to the committee. I think they would have justified, as I look upon it now, a larger price as a fair price in Louisiana.

Mr. HUSTED. Now, General, did you have any of those cost sheets before you, or any data on the cost of production before you personally in your office, when you concurred in the price?

Attorney General PALMER. I did not personally have them; no, sir.

Mr. HUSTED. You left that entirely to the determination of Mr. Mooney?

Attorney General PALMER. Yes, sir; but I accept responsibility for it.

Mr. HUSTED. And you acted upon his advice?

Attorney General PALMER. The Attorney General of the United States is not an individual, he is an institution.

Mr. HUSTED. I realize that.

Attorney General PALMER. He can not do all these things personally.

Mr. HUSTED. I simply wanted to know whether you had any of that data before you or not at the time you concurred.

Attorney General PALMER. I had the report of Mr. Mooney as to what the data showed.

Mr. HUSTED. The figures on the costs of production?

Attorney General PALMER. Yes; the figures he had received from persons whom he had consulted, and he told me what it showed.

Mr. HUSTED. As to the cost of production?

Attorney General PALMER. And I reluctantly concurred in that price because of the information I had had that they had offered the crop for sale at 14 or 15 cents.

Mr. HUSTED. I would like to have you go into that if you please, General——

Attorney General PALMER. It is a "short horse, soon curried."

Mr. HUSTED (continuing). Because it seems to me rather strange, when those people were willing to sell their entire crop at 14 or 15 cents, that a price was fixed under which they could sell at 17 or 18 cents.

Attorney General PALMER. That was a price which one of their representatives offered or told the Sugar Equalization Board that the entire crop could be purchased at, the idea being that that would be a fair average price, and I suppose having in mind that he could equalize it among the producers in a way that would get all of them out with their cost of production. My information was that after he returned to Louisiana and made some further investigations he discovered he was wrong about that and withdrew that proposition. All of this took place without my knowledge at the time, but between the time of the first visit of the Sugar Equalization Board and the final conclusion of the conference between Mr. Mooney and the producers and consumers.

Mr. HUSTED. For your information, I might say here that Mr. Zabriskie, in the course of his testimony, gave it as his opinion he could have purchased the entire Louisiana crop at 15 cents.

Attorney General PALMER. I think he ought to have done it myself. I urged him to do it. I told him how he could pay for it, too, but he did not see it.

Mr. HUSTED. At the time you concurred in this price of 17 to 18 cents, did you know that the Equalization Board were negotiating or had been negotiating with the producers in Louisiana to acquire the crop at 15 cents?

Attorney General PALMER. We knew that they had refused to do it; that they had refused to buy it. Those negotiations had been concluded before we took this up.

Mr. HUSTED. Did you know that the price of 15 cents, which was being considered, had not been turned down by the producers in Louisiana?

Attorney General PALMER. I knew when these conferences were concluded that it had been withdrawn by them.

Mr. HUSTED. Mr. Zabriskie, in the course of his testimony, said it never had been.

Attorney General PALMER. Well——

Mr. HUSTED. He said it never had been—the price had never been turned down.

Attorney General PALMER. I am talking about my information, and not Mr. Zabriskie's.

Mr. HUSTED. I want to find out.

Attorney General PALMER. And may I right here put in what Mr. Zabriskie said at this hearing before you the other day:

We did not think that many of those Louisiana planters could profiteer if they sold at 17 or 18 or 19 cents. They had a short crop; they did not have much more than 50 per cent of the crop of the preceding year, and it was the desire, if we continued in business, to handle those Louisiana planters on an entirely different basis; to have them sell their sugar at 11 cents a pound, and we would step in and absorb anything that might show them a loss.

That is exactly what I asked them to do and which they declined to do.

Mr. HUSTED. The criticism I think you made of reading extracts of communications between yourself and your attorney in Louisiana applies to that little extract which you just read there—

Attorney General PALMER. Life is too short to read all that testimony.

Mr. HUSTED (continuing). Because he did state, in his opinion, it could have been acquired at 15 cents, the entire crop, and the price was never turned down by the producers or their committee.

Attorney General PALMER. That does not change the situation any.

Mr. SUMNERS. Right in that connection, for the benefit of a clear record, I would like the statement of Mr. Zabriskie on that point to go into the record..

Mr. HUSTED. It is in the record.

Mr. SUMNERS. I know; but I want to make the observation, too, that for the chairman to quote the testimony of a witness, taking an excerpt from that testimony, in connection with the testimony of the witness before the subcommittee, has a tendency in itself to confuse the record.

Mr. BOIES. You can not confuse the record there.

Mr. SUMNERS. I do not think you can confuse it any worse than it is.

Mr. HUSTED. I would have quoted from the typewritten record had I had it before me, but I did not have it before me and have never seen it.

Attorney General PALMER. The producers are here and will testify relative to the so-called 15-cent price, which was never agreed to by them.

Mr. BOIES. There are two questions I would like to ask when the chairman is through.

Mr. HUSTED. If you will wait just one minute. Now, as to what would be a fair and reasonable price for this Louisiana crop, was Mr. John A. Parker consulted? Do you know, or happen to know, whether he was consulted about that?

Attorney General PALMER. I do not know.

Mr. HUSTED. I refer to the gentleman who was chairman of your committee to establish these local boards.

Attorney General PALMER. Who had been?

Mr. HUSTED. Were there any prosecutions at all in Louisiana instituted by the Department of Justice for violation of the Lever Act in selling any part of the 1920 crop?

Attorney General PALMER. I think so.

Mr. HUSTED. Prior to the date when these prices were fixed?

Attorney General PALMER. No; not prior to that date.

Mr. HUSTED. There were none prior?

Attorney General PALMER. There have been since.

Mr. MOONEY. Not of the producers but of the handlers.

Mr. HUSTED. You made some reference to the action of the President in refusing to accept the suggestions and recommendations of the Sugar Equalization Board to purchase the Cuban crop and, as I understood it, you seemed to justify the action of the President in refusing to do so upon the ground that Congress had not extended the Lever Act in accordance with what you state to have been his suggestion made some time previously?

Attorney General PALMER. I do not assume to justify any act of the President. I distinctly said I was not speaking for him; that he could answer for himself. I simply called the attention of the committee to the fact that the President, before that time, had already asked for this specific legislation which Congress, in its wisdom, has never seen fit to give him.

Mr. HUSTED. I assumed you did that in justifying his refusal to buy. As a matter of fact, the Sugar Equalization Board did strongly urge him to buy, notwithstanding that legislation had not been enacted, did they not?

Attorney General PALMER. No; I do not think so.

Mr. HUSTED. Two representatives of the board testified here they strongly urged him, on several occasions, to purchase the Cuban crop and not only urged him to purchase the Cuban crop, but told him what the effect would be upon the price of sugar in the United States if he did not do it.

Attorney General PALMER. Yes. Their letters speak for themselves. You can call it strongly recommending or not.

Mr. HUSTED. I understood you made a statement criticizing Congress for its failure to provide legislation for the purchase of this crop after, as you said, they had been recommended to do so?

Attorney General PALMER. I did not mean to be understood as criticizing the Congress. I meant to leave the inference that, in my judgment, it did not become Congress to endeavor to place the responsibility upon the President when the responsibility was theirs.

Mr. HUSTED. I merely wanted to ask you whether you thought it would have been quite the proper practice, in view of the fact the President repeatedly refused to act in this matter, for Congress to take it out of his hands, when it really was an executive matter and, notwithstanding his adverse action, to pass legislation compelling the purchase?

Attorney General PALMER. There was no adverse action on the part of the President.

Mr. HUSTED. Except his refusal to buy when urged to do so.

Attorney General PALMER. He did not answer; he did not say whether he would or would not buy. He was, I take it, waiting for the legislation which he had theretofore asked Congress to give him in order that it might make the buying effective, as the Sugar Equalization Board says.

Mr. HUSTED. Of course, if he had purchased the crop, there is not any doubt in your mind, I suppose, or doubt in the mind of

anybody else, that legislation to make it effective would have been speedily forthcoming?

Attorney General PALMER. There is great doubt in my mind about that, Mr. Chairman.

Mr. HUSTED. And the power to purchase was in the President.

Attorney General PALMER. The power to purchase was in the President, but the Sugar Equalization Board had notified him that the way they could purchase and would purchase, as a commercial proposition, was to distribute it as it had been the year before. And they have testified what they meant by that was that they must have legislation before they would purchase the crop. When the letter was received, the President had asked for that legislation and I myself came here before the congressional committees and urged that legislation and we were all, at the other end of the Avenue, waiting patiently for Congress to give us that legislation. Now it would have been utterly futile and useless for the President to have made any reply until he knew what you gentlemen down here were going to do.

Mr. HUSTED. It is quite clear the Sugar Equalization Board did not share your feeling on that——

Attorney General PALMER. They certainly did.

Mr. HUSTED (continuing). Because, notwithstanding the lack of legislation, they urged the President to act and act at once on repeated occasions.

Attorney General PALMER. I know, but——

Mr. HUSTED. And stated if he did not act what the effect would be upon the American public and upon the price of sugar in the United States.

Attorney General PALMER. Both Mr. Glasgow and Mr. Zabriskie make it perfectly plain it was not up to them to settle the policy of whether the sugar crop of Cuba should be bought by the Sugar Equalization Board, or not; that it was up to the President and they had told the President they believed it ought to be bought.

Mr. HUSTED. And urged it upon him.

Attorney General PALMER. That was their position, and it should be handled in the same way in which it was handled before. And they have repeatedly said to you and said before every committee before whom they have appeared, what they meant by that was they would have to have additional legislation before they would purchase the crop. Now, why should the President decide the question of policy as to the purchase of the crop when, if he had decided the question of policy he could not carry the policy into effect because you gentlemen had not complied with his request which had been theretofore made by him?

Mr. HUSTED. I might put it in another way: What use could there possibly have been in enacting legislation for the control of a crop if the President had repeatedly instanced, by his repeated refusal to accept the suggestion of the Sugar Equalization Board——

Attorney General PALMER. He had not refused to accept it.

Mr. HUSTED (continuing). That he would not buy the crop?

Attorney General PALMER. But he had not done so; he had not communicated his refusal; he had not replied to the communication. What I am saying is, without speaking for the President or anybody, if I had been in his place I would certainly have done as he did;

having asked you to give me the legislation, I would certainly have determined the policy when I got some answer to that suggestion.

Mr. HUSTED. It has been currently reported, I do not know by what authority, but it has been repeated by people high in authority, that the President was influenced in determining not to buy the Cuban crop by the opinion of Mr. Taussig; that Mr. Taussig based his opinion not upon the fact of legislation not having been passed, but upon economic questions solely, and the President was influenced by his economic opinion, by Mr. Taussig's opinion upon the economic question. I believe Mr. Taussig is a professor or has been a professor of economics at Harvard.

Attorney General PALMER. Who stated that as the President's opinion?

Mr. HUSTED. That has been currently reported and I was going to ask you if you knew anything about it, or not?

Attorney General PALMER. Mr. Chairman, you would hardly ask me to pass upon current reports and rumors about the President's reasons for his conduct?

Mr. HUSTED. I ask you whether, as a matter of fact, you know anything about whether it was true or not?

Attorney General PALMER. I do not.

Mr. HUSTED. I think that is all.

Mr. BOIES. Mr. Palmer, at the time this Sugar Equalization Board asked the President to indorse their desire to buy the Cuban crop, was not there sufficient law upon the statute books at that time to authorize them to distribute it as they had the year before?

Attorney General PALMER. Yes, sir.

Mr. BOIES. Now, do you think—

Attorney General PALMER. But, of course, you do not expect me to stop with "Yes, sir," on that answer, do you?

Mr. BOIES. You can explain when I finish.

Attorney General PALMER. I will explain when I see fit.

Mr. BOIES. Certainly. You may explain now, I do not wish to stop you.

Attorney General PALMER. Of course, the answer to it is obvious, and must have occurred to your mind just as it has to everybody else's. It has been repeated here so many times it ought not to be necessary to say it—that the only authority under which the distribution could have been made was the Lever Act and that expired with the proclamation of peace.

Mr. BOIES. It has not expired yet, has it?

Attorney General PALMER. It has not, but at that time everybody in the United States hoped and prayed and believed that we would soon have peace on earth and especially between this country and Germany and it was the common belief, of course, that it would soon expire. But the uncertainty about it was what made it impossible to use it, what made it necessary to fix a definite limit for the operation of the act; so that when he asked for a continuation of the act for six months beyond peace, then the Equalization Board would have known it had six months, or at least a certain time in which to distribute those stocks. If they had had to operate under the Lever Act, without that information of a definite time in which to distribute those stocks and without any extension of the Lever Act, they may have bought the Cuban crop and the next day been without the power of distribution.

Mr. BOIES. And right there is where I am pleased to ask my next question. Do you believe that the President thought at the time the Sugar Equalization Board made these requests, that peace would come and thereby the Sugar Equalization Board be denied the authority to distribute the sugar before they could do it; that is, do you think that the President thought or was actuated by the thought that peace would come so soon that the Sugar Equalization Board could not act?

Attorney General PALMER. Well, it is a little hard for me to say what the President thinks or has thought. But if you ask my opinion about it, I would think that it was highly probable, in August, 1919, he could not have conceived of the utter failure of the Senate of the United States to ratify soon, in some shape, the treaty which he had sent to them.

Mr. BOIES. "In some shape" is a good qualifying phrase.

Attorney General PALMER. They never did; oh, no; they have never ratified the treaty in any shape.

Mr. BOIES. No, sir; they have not. Now, then, I understood you to state, or it seemed to be your belief, that it had been claimed here that on account of your connection with the sugar question in Louisiana, eight or nine hundred thousand dollars had been lost to the people of this country?

Attorney General PALMER. Not thousands; nobody ever charged me with thousands; it is millions.

Mr. BOIES. Eight or nine hundred million dollars?

Attorney General PALMER. Yes.

Mr. BOIES. Now, the claim that has been made here in the record is that loss of eight or nine hundred million dollars was due to the fact that the President did not act.

Attorney General PALMER. Oh, is it?

Mr. BOIES. Not due to your action.

Attorney General PALMER. I thank you for those kind words. [Laughter.]

Mr. BOIES. I wanted to take you out of that position.

Attorney General PALMER. I am glad to find one thing I have not been charged with.

Mr. BOIES. I am not here to charge you with anything, Mr. Palmer, but you put the time in August when the President probably had a right to believe that peace was going to come soon. Did the same conditions exist in October in your judgment?

Attorney General PALMER. Well, as I look back at it now, I realize that peace was quite as remote in October as it was in August; but in October I thought we were a little nearer to it.

Mr. BOIES. Did you think we would get to it before this board would have a chance to operate under the Lever Act?

Attorney General PALMER. I had various feelings about it. Some days, as I watched the Senate proceedings, I had strong hope, and at other times I had a feeling of despair. I finally gave up in despair and quit hoping. Nobody knew; that is the point about it; nobody knew.

Mr. BOIES. You said you would have acted as the President did. Now, in October, if the Sugar Equalization Board had appealed to you earnestly for the power to buy this Cuban crop at 6½ cents, telling you they were fearful that the offer would be withdrawn, would you have

refused, basing your judgment upon the fact that you were afraid peace would be declared before they could act?

Attorney General PALMER. If they had also said, as they did in this case, that they would of course not buy the crop without they could handle it in the same way they did the year before, and if I realized that meant a continuance of the Lever Act, I would have refrained from announcing my decision with respect to the policy until Congress had done what I had requested them to do.

Mr. BORES. Would not you have taken it up again with Congress, called their attention specifically to the necessity for buying this crop and what the Sugar Equalization Board had asked and put it back to Congress again?

Attorney Gen. PALMER. Oh, no; I think I would have presumed upon the intelligence of Congress to know what was meant by the extension of the law and that it was not necessary to remind them of it every few days.

Mr. BORES. They did not know anything about the private correspondence between the Sugar Equalization Board and the President.

Attorney General PALMER. No; but they knew all about the Cuban sugar crop; they knew all about the Lever Control Act and when it was to expire—at least, I assume they did.

Mr. SUMNERS. As a matter of fact, General, with reference to the purchase of the Cuban crop, the facts are that the President of the United States went to the Congress and asked for an extension of the Lever Act in order that the Sugar Equalization Board might, if it began to function with reference to this 1919-20 crop, complete the necessary work of distribution?

Attorney General PALMER. That is not the only thing he had in mind; he wanted an extension of it for that and other reasons. That would have been the effect.

Mr. SUMNERS. I understand, of course. Now, then, the facts are that the President of the United States did not recommend the purchase of the Cuban crop and the Congress of the United States did not enact the legislation necessary to have carried to the people of the United States the Cuban crop if it had been purchased?

Attorney General PALMER. Not until the end of December, when it was too late to purchase the crop.

Mr. SUMNERS. Yes. Now, then, I take it from the question of one of the gentlemen of this committee that at that particular time the Congress was so deferential with reference to the President of the United States, it would have felt a delicacy in expressing its legislative opinion with regard to this matter and giving legislative authority to the Sugar Equalization Board, having discovered that the President had not answered their letter, and therefore it felt that it was not proper for the Congress to legislate with regard to the matter?

Now if there is any responsibility about this purchase or failure to purchase the Cuban sugar crop, to say the least of it, it rests between the Executive and the Congress—to say the least about it. Neither moved and the action of both was necessary in order to close the deal and distribute the sugar to the consumer.

Attorney General PALMER. That is the kindest thing that can be said.

Mr. SUMNERS. I understand. In August, 1919, or at the time the Equalization Board submitted the proposition to the President, is it not a fact, and does not the record clearly disclose that what the Equalization Board did was to suggest to the President, as business men, it was quite a good buy, and that was all?

Attorney General PALMER. Yes. That is practically it. They say, as directors, they put it up to their stockholders.

Mr. SUMNERS. Of course the purchase of the Cuban sugar crop and the action of the Attorney General with regard to the prices of wheat in New York, and testimony with regard to many things not collateral, which has gotten into the record, could not be considered by you when you faced the Louisiana situation and had nothing to do with your determination?

Attorney General PALMER. Certainly not.

Mr. SUMNERS. When you faced the Louisiana situation, as a practical proposition, you felt you owed a duty to the public, to the Louisiana producer and to your own responsibility, to do the best you could through your representatives to ascertain in advance and to announce your ascertainment as to what, in your judgment, would be a price at which the Louisiana producers could sell and not subject themselves to the penalties of a criminal law?

Attorney General PALMER. That was for the guidance of our own Department in the enforcement of the law.

Mr. SUMNERS. These people had a right to have in fairness and common honesty some intimation with reference to an uncertain law like that?

Attorney General PALMER. I think so.

Mr. SUMNERS. And an uncertain condition like that. And an Attorney General who wanted to be square and honest with the people and unafraid, would first make the investigation and, in common honesty, announce his judgment and conclusion to everybody concerned?

Attorney General PALMER. That was my judgment, sir.

Mr. SUMNERS. And that is what you did do?

Attorney General PALMER. Yes, sir.

Mr. SUMNERS. Now, then, the man in Louisiana whose crop was produced under extraordinarily unfavorable conditions and who could not get out at that price, of course would have subjected himself to inquiry if he sold at a higher price; but would not, under those facts, subject himself to a conviction. And, in common honesty, considering the obligation which your local representative had, the chances are he would not even have subjected himself to prosecution?

Attorney General PALMER. No, not if an investigation showed he had not charged an unjust and unreasonable price, even if that price were higher than 17 cents, he would not have been prosecuted. If it showed he had charged an unreasonable price, he would have been.

Mr. SUMNERS. Now, from the standpoint of a common sense, practical and honest administration of the Lever Act, and in order to avoid such an accumulation of litigation that every law department would have been swamped and the courts congested beyond any possibility of functioning, it was necessary for you to deal with those matters of price and profits somewhat on the basis of an average, was it not?

Attorney General PALMER. Yes, to some extent.

Mr. SUMNERS. Somewhat?

Attorney General PALMER. Yes.

Mr. SUMNERS. And you undertook, as I understand you, to do that in Louisiana in dealing with those people there?

Attorney General PALMER. Yes. It was more than that; it could hardly be said that we considered that an average price—an average fair price; but from all the facts and circumstances, we were convinced that was the maximum price at which anybody could sell and not be subjected to a charge under this law.

Mr. SUMNERS. Of course anybody who could buy any sugar (which from a practical standpoint they could not do) could get it at any price they wanted?

Attorney General PALMER. Yes.

Mr. SUMNERS. They could buy. But that did not apply to that case?

Attorney General PALMER. No. It is totally impracticable—it would be utterly hopeless for us to investigate every sale made in the United States to determine whether a particular sale of any commodity was at an unjust and unreasonable price. We could not do that. The billions upon billions of sales that are made in America would make it utterly inadvisable that any effort like that could be made. We have somewhere to strike some general standard, some general rule.

Mr. BOIES. Is it your understanding, Mr. Palmer, that the President, in his request to Congress for a six months' extension of the Lever Act, made any mention of sugar and the purchase of sugar?

Attorney General PALMER. No; he did not.

Mr. SUMNERS. But if the act had been extended the Sugar Equalization Board could have operated?

Attorney General PALMER. That is the point exactly.

Mr. TINKHAM. Have I the permission of the committee to ask the Attorney General a few questions?

Mr. HUSTED. I have no objection if the Attorney General is willing to be interrogated.

Attorney General PALMER. It is a very unusual practice, Mr. Chairman, and I prefer the chairman should ask me the questions.

Mr. TINKHAM. Does the Attorney General decline?

Mr. HUSTED. He says he prefers not.

Attorney General PALMER. No; but I am willing to answer any questions the committee wants to put.

Mr. SUMNERS. I take it this is an investigation by the committee. We want to find out the facts in this case, and Mr. Tinkham does not have any right to appear here as a prosecutor of the Attorney General of the United States.

Attorney General PALMER. I have no time to submit myself to questioning by everybody who wants to ask questions.

Mr. HUSTED. I think that is entirely a matter for the Attorney General, whether he wants to or not. Of course, in many hearings the introducer of the resolution is, as a matter of fact, permitted to ask questions and it often happens.

Attorney General PALMER. That may be true of the usual witness, Mr. Chairman, but I think it is hardly true of the head of a department of the Government.

Mr. TINKHAM. May I ask the chairman to put the questions that I may suggest to the Attorney General?

Mr. HUSTED. If you will give me the questions, I will look them over.

Mr. TINKHAM [handing memorandum to Mr. Husted]. There are also some questions I should like to ask, based upon notes I have taken during his testimony.

Mr. HUSTED. If you will state to me any particular question, Mr. Tinkham, you would like to have asked, I will present it for you.

Mr. TINKHAM. I would like you to ask the Attorney General with reference to his telegram of November 8 to United States Attorney Mooney, where he says, "consider agreed price rather high, but hereby concur in maximum fixed price," if he thought this price was high and he was trying to reduce the cost of living, why he should have agreed to a price which he says he considers high rather than low.

Mr. SUMNERS. Right in this connection and before the chairman proceeds, for the record, as an individual member of this committee, I take the position that the witness, under the chairman's ruling, of course, may submit that to the discretion of the chair and the chair, in asking the witness, assumes the responsibility of exercising his discretion to the extent he proposes to ask that identical question. Now, with that understanding to go in the record, I have no further observation.

Mr. HUSTED. I will put the question in this way to the Attorney General—

Attorney General PALMER. I have already answered it.

Mr. HUSTED. I think you state in your telegram that you consider that price rather high?

Attorney General PALMER. Yes.

Mr. HUSTED. Nevertheless, you consented to it?

Attorney General PALMER. Yes, sir.

Mr. HUSTED. Now do you care to make any explanation as to why you consented to a price you considered rather high?

Attorney General PALMER. I would have been glad if the price could have been 15 cents; I would have been very glad if it could have been 12 cents, and even more glad if it could have been 10. I wanted the price to be as small as possible. I considered the price as high, because I had the information the planters had told the Equalization Board they would sell at 15 cents. I did not at that time know whether that was the judgment of all the producers or not. I acquiesced in the 17 cents because of the findings of fact on the part of Mr. Mooney and his associates. I exercised my best judgment and discretion, Mr. Chairman.

Mr. SUMNERS. Right on that point, as I understand the Attorney General—I want to be clear about it—you had this information about 15 cents and your own impression was it was too high; but yet, having your own representative on the ground you yielded to his judgment and information?

Attorney General PALMER. That is what I have tried to say.

Mr. TINKHAM. There is another question in relation to this very point. The Attorney General has read a letter which he sent to Mr. Mooney on the 6th of November in which he stated to Mr. Mooney he would not agree, as I understood the reading of it, to more than 15 cents. In the next communication from the Attorney General without any telegram in the meanwhile being received, as I understood the reading of the telegram, he agrees to the price of 17 and 18, which he says he regards as rather high. I want to know what

evidence he had, which has not been produced, which changed his mind after he had taken the position that he would not agree to anything but 15 cents for the crop.

Attorney General PALMER. I had the opinion of all the parties to the conference with Mr. Mooney communicated to me by Mr. Mooney in whose judgment I had the greatest confidence. Is that all?

Mr. TINKHAM. I would like to ask one more question through you, Mr. Chairman, and that is whether the Attorney General knew or not that the uniform practice of the Food Administration, in fixing or determining prices or profits, was to fix a margin of profit so that if one manufacturer was producing at a low cost he would only receive the same profit that one who at a high cost was producing his goods, whether he knew that was the uniform practice. And if he did know that that was the uniform practice of allowing each one an equal margin of profit above the cost of his product, why he did not employ that system instead of adopting a general price for an entire territory where there were such variations in the cost of production of a crop; and if the adoption of the margin of cost or fixed margin of cost, which he might have announced, would not have led then to the low-cost producer receiving the same price as the high-cost producer and thereby prevent profiteering.

Attorney General PALMER. Can you repeat that, Mr. Chairman?

Mr. TINKHAM. I think the chairman can simplify it.

Attorney General PALMER. Nevertheless, I will answer it.

Mr. HUSTED. Did you understand the question?

Attorney General PALMER. Yes; I guess so. The first answer that occurs to me is that I was the Attorney General of the United States and Mr. Hoover was not. What Mr. Hoover may have done when he was Food Administrator as to the fixing of the margins of profit or reasonable prices had nothing to do with what I should do in administering a criminal statute which was passed after Mr. Hoover went out as Food Administrator. He had the licensing system; he enforced this profiteering statute by the use of the licensing system, and it was possible for him, in the announcement of a fair margin of profit, to control the situation and to enforce it by revoking the license of the man who violated it. I had a criminal statute to enforce and one under which I hoped confidently to get some results for the public, and I did not conceive it was in the public interest for me to announce a margin of profit to a refiner or a dealer, because the price would be different.

Mr. HUSTED. You are doing that now, though, are you not?

Attorney General PALMER. Oh, in some cases, coupled with the fair price. There was this additional trouble about that, Mr. Chairman. Farmers, agriculturalists, producers from the soil, are exempt under this statute, and the Louisiana producer of cane sugar could not have been controlled by me except as he is controlled in the price of the sugar. The margin of profit, therefore, would have had no control whatever on the price of sugar, because the cane producer whom we could not control and who was exempt from the law, could have charged anything he pleased; and with a margin of profit added he would have gotten very high prices for the sugar.

Mr. HUSTED. But your contention was, as I understand it—and personally I do not think there is any doubt about it—that the commercial sugar is a manufactured product, and consequently comes under the Lever Act?

Attorney General PALMER. Oh, the sugar itself—surely. But there is a nice question about whether the cane could have been controlled as to price, being the farmers' stuff.

Mr. TINKHAM. I would like to ask one more question along that line and that is this—

Attorney General PALMER. Wait a moment, in order that I may complete that answer. My attention is called to what I had overlooked for the moment that the Supreme Court has definitely decided that a producer of sugar cane is a farmer within the meaning of this statute.

Mr. SUMNERS. Right on that point: Do they not hold he can sell his sugar? I am not sure about that.

Attorney General PALMER. I am not either. We will give you the opinion.

Mr. MOONEY. That question arose under the bounty, and he was entitled to the bounty.

Mr. HUSTED. There is no question but cane, when cut on the farm, is an agricultural product. I do not see how there ever could have been any question about that. But when the cane goes to the factory and is made into the manufactured product, I do not see how any difference could be made between that and any other manufactured product.

Attorney General PALMER. Yes; but some of the producers of cane make the sugar themselves and others sell their cane to the refiner and other purchasers.

Mr. HUSTED. We expect to go into that later on.

Attorney General PALMER. I understand. And if I had fixed the margin of profit on sugar I would have subjected the producer of cane to no control whatever. He is only controlled by the price of sugar at the end of the line, and can not be controlled by the margin of profit. Is there anything else?

Mr. TINKHAM. Mr. Chairman, one more question: Will you ask the Attorney General if by his system of setting a general price for the whole of the Louisiana sugar at 17 and 18 cents, he did not first allow a low cost producer or a plantation where conditions had been particularly favorable to make a very large profit, and that if they made a very large profit by his statement that he would not prosecute the sales under 17 and 18, he allowed that profiteer immunity?

Attorney General PALMER. No; there was no granting of immunity to anybody. There were no prosecutions. What the Attorney General did if he did what the gentleman describes in his question and it had that effect was to exercise a discretion which is vested in him as a law enforcing officer as to what cases he would prosecute under this law.

Mr. TINKHAM. Just one more question.

Mr. HUSTED. Is this the last question?

Mr. TINKHAM. This is the last question.

Attorney General PALMER. It can hardly be said that in all the thousands upon thousands of cases where the prosecuting officers of the country decide not to prosecute a certain case, that they are granting immunity to any violators of the law.

Mr. TINKHAM. Just one question: This will be the last—whether the Attorney General does not consider that he was honorably bound not to prosecute any producers in Louisiana who sold for less than 17

and 18, when he made the announcement that he made in his telegram of November 8?

Mr. HUSTED. He has already said yes to that, that he could not prosecute under those circumstances.

Attorney General PALMER. I said I would not.

Mr. TINKHAM. He said he would not.

Attorney General PALMER. I did not say I could not.

Mr. HUSTED. I did not mean legally, but you could not consistently with your own conscience prosecute them after you had made that announcement?

Attorney General PALMER. I would not decide to prosecute; I would not prosecute.

(The subcommittee thereupon adjourned until to-morrow, Friday, April 30, 1920, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Friday, April 30, 1920.

The subcommittee met at 10.30 o'clock, a. m., Hon. James W. Husted (chairman) presiding.

TESTIMONY OF MR. HENRY MOONEY, UNITED STATES DISTRICT ATTORNEY, NEW ORLEANS, LA.

(The witness was duly sworn by the chairman.)

Mr. MOONEY. Mr. Chairman, if it is agreeable to the committee, I would like to make my statement, and then, of course—

Mr. HUSTED (interposing). That will be perfectly agreeable to me, with the understanding, however, that you will answer any questions that any member of the committee may wish to ask.

Mr. MOONEY. I think that would save time. Nearly all of us are lawyers, and we know that we will save time in that way.

Mr. HUSTED. You must limit your statement to matters about which we are inquiring.

Mr. MOONEY. I am not going to make any argument, but I will just state the facts.

Mr. Chairman, the correspondence between the Attorney General's office and the district attorney in New Orleans was referred to at length yesterday by the Attorney General himself, and I trust that it is clear in the minds of the committee. Therefore, I will only refer to the matters which occurred at the other end of the line. When I received the word from the Attorney General's office to take up the question of determining what might be a fair price for the Louisiana sugar crop, it came upon me rather unexpectedly, I might say. We are all more or less interested in the great products of our country, and I was in sugar, but not personally, because I own no sugar properties and no member of my family does, but I know a great many people in Louisiana and New Orleans who are interested in the sugar industry directly and indirectly. As soon as I received the word from the Attorney General, I got in touch with some of the representatives of the cane growers association there and some of the prominent planters. I also got in touch with as many prominent consumers as I could, or with business men in

whose judgment I had great confidence, and men whom I thought knew enough about the conditions to give me advice upon which I could safely rely. I suppose that in the few days that passed between the reception of my instructions from the Attorney General and the 8th of November, when the fair price was finally acted upon, I must have interviewed, I may say without exaggeration, in the neighborhood of 150 people in the city of New Orleans, representing, I might say, the interests largely of the consumers, and I saw many who were interested, I might say, directly or indirectly, in the industry itself.

I remember particularly a committee of gentlemen representing the New Orleans Coffee Co., Penick & Ford, and the Dunbar Molasses & Syrup Co. They are people who put up sirup and other like products in cans for general consumption. The product they turn out is looked upon as a standard article of food, and they were very much of the opinion that a high price for sugar would so affect their product as to make it a luxury instead of a necessity, and, perhaps, put them out of business entirely. These men I refer to particularly because they are men of very fine business qualities and men of strong personality. They came to me, and I have letters from them here to-day, with the idea that 18-cent sugar was too high; that the planters were too pessimistic about the condition of their crops, and that, perhaps, I was being a little misled and would agree upon a price that was not fair to the consumers. That was the attitude of those gentlemen, and if the committee will permit me, I would like to read some letters I have from them now, showing that I had this conference with them. The letters are short, and I can read one and just file the others.

MR. HUSTED. From whom are they?

MR. MOONEY. The first letter is from Mr. Penick, president of Penick & Ford. I am speaking now of this committee of consumers there who put up grocery products.

MR. HUSTED. I have no objection to the insertion in the record of anything that is material and that has any bearing upon this question the committee is considering, but I do not want the record loaded up with correspondence that has no particular bearing upon the question.

MR. MOONEY. There are only two or three letters here, and they are very pertinent. I asked Mr. Penick to come before the committee, and I would have liked for the gentlemen of the committee to have heard him. However, he was unable to come, and wrote me this letter. The letter is dated April 26, 1920, is addressed to me, and reads as follows:

DEAR SIR: It is a matter of regret that on account of very pressing business matters neither Mr. Ford nor myself can accompany you to Washington at this time as we certainly have every disposition to lend what aid we may to the Attorney General and yourself in this matter.

As we are the largest packers and handlers of grocery grades of molasses in this country, we were intensely interested in prices fixed on sugars, as the cost of our products are based thereon, and I remember very pleasantly a visit to your office in company with our vice president, Mr. J. P. Ford, Mr. Brown, of the Dunbar Molasses Co., and Mr. Powell, of the New Orleans Coffee Co., which visit had for its object a friendly discussion of the then proposed action by the Attorney General in fixing a price at which Louisiana sugars could be sold without subjecting the manufacturers to the charge of profiteering.

We stated to you at that time that in our opinion the planters were unduly alarmed with regard to the shortness of their crops and expressed the belief that the outturn would be much larger than they anticipated, but we feel that it is only just to say that we were mistaken and the total outturn of the crop was very much less than any of us thought at that time; in fact, our information is that it was one of the most disastrously short crops in the history of Louisiana and that many planters lost money even at the price finally fixed by the Attorney General.

Here is a short letter from Mr. Sol Brown, who was also on that committee:

NEW ORLEANS, April 26, 1920.

Mr. HENDY N. MOONEY,

United States District Attorney, New Orleans, La.

DEAR SIR: In answer to your inquiry, the writer begs to advise he distinctly recalls the interview between your good self and the delegation composed of representatives from the firm of Penick & Ford, New Orleans Coffee Co., and Dunbar Molasses & Syrup Co. (the latter company represented by the writer), during the time that you were considering at what price Louisiana producers should be permitted to sell sugar and not be profiteering, and we told you that in our opinion the reports of a short crop were exaggerated or, in other words, that a better crop would be harvested than then anticipated, and for that reason we thought the price of 18 cents would be entirely too high.

Of course, as you know, the crop has since been harvested, and the outturn shows that the total amount in tons fell below all estimates made at that time; therefore, based on the information furnished, you were not mistaken as to the price.

Yours, very truly,

DUNBAR MOLASSES & SYRUP Co.,
SOL BROWN, Vice President.

The other gentleman, Mr. Powell, who was the third member of the committee that waited on me, was at the time I left New Orleans in New York, and I was unable to get a letter from him. I hoped to have him here before you but could not make the arrangement. I introduce these letters and that evidence, gentlemen of the committee, simply to indicate that the pressure was not one-sided in New Orleans. I was hearing both sides of the case and giving everybody an opportunity to present his views. I intended to act upon all the advice I could get.

Now, in addition to that, correspondence which indicated that I was referred to ex-Senators Foster and Guion, was offered in the record yesterday. I saw both of those gentlemen, as the Attorney General stated. One of them had been twice governor of Louisiana, and he lives in St. Marys Parish, one of the largest sugar parishes in the State, and was thoroughly familiar with the crop conditions last year, as well as, in a general way, with the sugar industry and the expense connected therewith. The other gentleman, Judge Guion, had been for a number of years, or three terms, I believe, attorney general of the State of Louisiana, and he filled the unexpired term of Senator Broussard in the United States Senate. They are both gentlemen in whom the entire State has the utmost confidence, and they are gentlemen in whose judgment the entire State, I am sure, reposes the greatest confidence. I talked with both of them and went over with them the entire ground, and the result of that interview is incorporated in a telegram which is on file in the record.

A statement or a question emanated from the chairman yesterday as to whether Mr. John M. Parker had been interviewed. I talked with a great many people, and my recollection is that I spoke to Mr. Parker at the time, and that his views on the question coincided with the views of the two ex-United States Senators. Mr. Parker is on record, and we have evidence of that in this report of the hearings before the Agricultural Committee on October 20, 1919, in the

form of a telegram addressed to Judge Martin, representative from the Third Louisiana District, and which is filed in the record of those proceedings. It is short and I would like to read it, if the chairman will permit.

Mr. HUSTED. Is it in relation to the price of sugar?

Mr. MOONEY. It is not in relation to the price, but it gives his views of the situation at that time, and I think it is very pertinent to the question you are considering. It is dated New Orleans, October 18, which was just about three weeks before the meeting of November 8. It is addressed to Hon. Whit P. Martin, House of Representatives, Washington, D. C., and reads as follows:

We must not forget that the agriculturist who produces those things necessary to feed and clothe the world is to-day the most vitally important factor in preventing actual suffering and unrest. Manufacturers, dealers, and jobbers are reaping handsome profits. In every section able-bodied men are being drawn from the fields to the already over-congested cities. Young men and women see no incentive to remain on the farm. While the world constantly needs more, the supply of our agricultural products is constantly decreasing. Instead of legislation dictating to actual producers what they can obtain for their products every effort should be made to increase production and not stifle it. The welfare and prosperity of producers to-day is the paramount question before the American people in order to prevent dissatisfaction, actual suffering, and bolshevism. I earnestly hope that you will use all your efforts to prevent arbitrary control by men who are not familiar with the problems, and inaugurate a vigorous campaign by which agricultural producers in every line will be permitted unhampered to realize value for their products, and once more make farming and country life attractive.

Mr. HUSTED. Do you construe that as being in opposition to price fixing by the Attorney General of Louisiana sugar?

Mr. MOONEY. To price fixing by anybody, yes, sir; but not to what the Attorney General did, because we did not do that. I have a very clear distinction in my mind between what the Attorney General did and price fixing as the term is generally used.

The telegram continues:

Louisiana sugar producers have been both loyal and self-sacrificing. They are confronted with the shortest and most expensive crops in their experience. They are entitled to sell their product at its fair market value or else face ruin. My experience as Federal Food Administrator satisfies me that many well-meaning men try to pass iron-clad legislation in regard to important matters on which they are practically ignorant but overcrowded theoretically. To-day the prosperity and increased production of agriculture is the problem not only to the Nation but to the world, and that fact should at once be realized by thinking and patriotic Americans.

JOHN M. PARKER.

That telegram was placed in the record. The position of the former food administrator on this proposition was well known to me, and my recollection is that I did discuss it with him at that time. At any rate, I conferred with the producers, and the committee seemed to attach some importance yesterday to the fact that we conferred with the producers. Now, the purpose of that conference, so far as I was concerned, was to ascertain from the man who raised the crop what would be a fair price for his crop. I did not at that time, and I do not to-day, consider that I was dealing with a lot of criminals, but I felt that I was approaching a party of men who typified the best citizenship of our State, and men whose patriotism had been tried and tested during the war and men whose honor and good citizenship were unquestioned. When I went before them it was not with a threat that if they did not do what I wanted them to do I would put them in jail. That was not my attitude at all. If it

had been, I do not think we would have had more than one conference, and that one would have been very short. The purpose of that conference was to ascertain from the planters what the crop conditions were in their respective parishes.

A committee was appointed, as the record shows, representing the sugar producers and the manufacturers, and the cane grower who did not manufacture his product or crop, with five members from each parish and five members of the Sugar Exchange, and those gentlemen discussed the crop condition. Some of them had started their factories and had ground a few hundred pounds or a few thousand pounds of sugar; and they told me that as time progressed, instead of growing more optimistic, as they saw it then, they were growing more pessimistic as to the crop condition. My telegram reflects that situation. As the cane passed through the mills at that time, it showed a low yield of sucrose, and it was evident that the crop was rather considerably below a full crop. I believe that the Government figures now show about 43 or 44 per cent of a crop as the result of last year's operations. Now, that also appeared at that time in the record of the testimony of the members of the Sugar Equalization Board, particularly of Mr. Zabriskie, who is regarded as an authority in such matters. Mr. Zabriskie did say that he believed that at 15 cents per pound many of the planters in Louisiana would lose money on their last year's crop. He did say that he knew from all the data that had been supplied to him—

Mr. HUSTED (interposing). To whom did he say that?

Mr. MOONEY. In the hearing before the Agricultural Committee in October. It is all in the record. I can refer to the page. It is at page 68 of that hearing, and I will read a few questions asked by Congressman Martin and the replies by Mr. Zabriskie:

Mr. MARTIN. In testifying before the Senate committee that investigated sugar, Mr. Hoover made this statement in reference to contracts:

"Supposing that we had made no agreement with him (that is, the producer) during this shortage he would probably have sold his sugar at 25 or 30 cents a pound."

Do you agree with that statement?

Mr. ZABRISKIE. I think it would bring 25 or 30 cents a pound.

Mr. MARTIN. Then by virtue of that contract the consumers saved that amount and the producers lost that amount?

Mr. ZABRISKIE. Yes, sir.

Mr. GLASGOW. The producers lost what they might have made.

Mr. MARTIN. As a matter of fact you had no trouble entering into the contracts with the producers?

Mr. ZABRISKIE. They are all voluntary and they all lived up to their agreements.

Mr. MARTIN. Now, you said something about the Louisiana crop; do you know how short that crop will be this year?

Mr. ZABRISKIE. Well, our advice would indicate that they would not have more than half of what they raised a year ago.

Mr. MARTIN. As a matter of fact, there are a great many factories there that will not turn a wheel.

Mr. ZABRISKIE. Probably.

Mr. MARTIN. Many will have to use this year's crop for the planting of next year's crop?

Mr. ZABRISKIE. Yes.

Mr. MARTIN. That being the case, even if they got 15 cents a pound, many of them will lose money?

Mr. ZABRISKIE. I think they would, Congressman.

Mr. MARTIN. It is a question of how much they will lose. Is this short crop due to causes beyond their control, or is there any way for them to make a better crop?

Mr. ZABRISKIE. Why, I think they exerted every effort to make a big crop.

Mr. MARTIN. And it is due to shortage of labor and bad weather?

Mr. ZABRISKIE. That is what our reports are.

Mr. MARTIN. And upon a very material increase, also, in all the articles that go into the production of sugar?

Mr. ZABRISKIE. Yes; that is true.

Mr. MARTIN. Over last year?

Mr. ZABRISKIE. Yes.

Therefore, we had the advantage of the investigation which had occurred before the Agricultural Committee in October. We knew that the price of the 1918 crop had been established and fixed by the Equalization Board upon a cost basis and upon cost sheets which were furnished by the planters to the Equalization Board; so that when we met these very pertinent facts were in evidence showing that this year's crop was not only generally conceded to be but half a crop or less, but that it cost much more to produce than did the crop of the preceding year. We found that at 15 cents, according to the testimony of Mr. Zabriskie, of the Equalization Board, many of those planters would lose money. Now, as against that, I had the desire as did everyone, to keep down the high cost of living. I might say that my purpose was to appear contradictorily, and I did, I think, assume that attitude toward the planters' committee. Very naturally, they were representing themselves, and I felt that it was up to me to represent the other end of the proposition. Every price from 20 cents down was discussed. I remember that suggestions came from various members all the time, first, from one gentleman and then from another, saying that they could not make out on less than a certain figure which they would suggest. After a general discussion, I told them that I knew the department would not consider those prices that were being mentioned there, of 20 cents and 19 cents, as a fair price for the crop. I felt that without the slightest doubt the department would say that those prices were too high. A subcommittee was appointed, composed, I believe of seven members of that body. We met and discussed it, as my correspondence with the Attorney General shows, and there was but one man on that subcommittee originally voting for 17 cents. The other six submitted figures above 17 cents.

I have a letter from that gentleman, who stood originally for 17 cents. When the price was fixed at 17 cents for prime plantation yellow and 18 cents for granulated, this young man, who is one of the largest planters in the State of Louisiana, felt that he saw his way clear to make a profitable crop. He told some of his friends that he believed he could have made money at a lower figure; but in nearly every instance the actual results showed a worse condition than even the least hopeful had anticipated. This letter is from Mr. D. W. Pipes, jr., who manages the estate of H. C. Minor. This estate comprises some six plantations in Terrebonne Parish, which is one of the best sugar-producing parishes in the State of Louisiana. As I say, from this optimistic man, who was the only man on the committee who voted for 17-cent sugar, I received this letter. It is short, and with the permission of the committee, I would like to read it. It is dated April 22, 1920.

Mr. HUSTED. This letter was written after the fixing of the price?

Mr. MOONEY. Yes, sir; this was written by a gentleman who thought he could make money at less than 17 cents, and who thought that 17 cents would be a fair price. He was the only member of the committee originally voting for as low a price as 17 cents. They

were then just getting the results of their crops. The voting done in October and November was a matter of careful estimates and price-prognostication, but now we are dealing with the results as they came. I regard this letter as pertinent because it shows the results as to the man who was most optimistic and who was a member of the committee which was trying to establish a price at which they could sell their sugar without the fear of prosecution.

Mr. HUSTED. As a matter of fact, you read it in confirmation of your judgment in regard to the fixing of the price?

Mr. MOONEY. Yes, sir. The letter is dated April 22, 1920, is addressed to me, and reads as follows:

Your letter of the 20th at hand. Relative to our cane crop of 1919, will say that it was the smallest and most expensive one within our memory.

We ground 21,800 tons of cane last year, as compared with 81,000 tons in 1918 and 80,000 tons in 1917. Our losses in field operations for 1919 totaled \$59,000 in spite of the fact that the fields were allowed the same credit for cane as outside cane growers.

Added to the poor tonnage of cane in the fields an extremely low sucrose content of juice extended throughout grinding season with low yields in sugar factory.

With the unfortunate combination against us, the high price of sugar was our only salvation, and enabled us to show a very small profit on the year's operations.

Trusting the above information will be of assistance to you, and with kindest personal regards,

Very truly, yours,

D. W. PIPES, JR.

Mr. HUSTED. This gentleman says he wants to aid you in your position.

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. Let us see if he does. I think that letter is a very fair statement of facts.

Mr. MOONEY. He begins with an acknowledgement of my letter of the 20th, and closes with this statement in the last paragraph:

Trusting the above information will be of assistance to you, I am, with kindest personal regards, very truly, yours.

I think this gentleman did understand that it was a rather delicate position for the district attorney to try to handle a proposition as large as that one. They appreciated that fact at the time, and when this resolution was introduced, aimed at the Attorney General, and questioning the legality of what had been done, and as the intent of the resolution seemed to be to find out whether we had done something unlawful, those gentlemen who were on the scene and with whom I had acted, but contradictorily from, honestly thought that it was an injustice, and they wanted it set right before the committee. I believe I could have had a letter from every planter in the State of Louisiana. I selected this man because he was the low man on the committee, and, of course, the result of the crop justified the judgment exercised at the time of the establishment of a fair price.

Mr. SUMNERS. That letter shows that the judgment of the majority of the subcommittee was correct at the time it was made.

Mr. MOONEY. Yes, sir; I think it does.

The legal phase of the situation with which I was concerned was this: As I have said, I did not approach these gentlemen with a threat that I was going to send anybody to jail. They had all acted voluntarily during the war in the most patriotic sort of way, and then at the price fixed they had lost money. I told them that the purpose of the meeting was to see if we could not, taking into consideration all of the facts, and with all of the light that could be thrown upon

the situation at that time, agree upon a price which would on its face create the presumption of fairness. I believe those were my very words—that is, a presumption of fairness in regard to everybody, if we could do that.

Mr. HUSTED. Do you believe that was the correct way to negotiate in order to arrive at a fair price from the standpoint of the public?

Mr. MOONEY. It was the only way.

Mr. HUSTED. I have not the slightest doubt but that the sugar planters of Louisiana have as much patriotism as anybody in the country, but they are like anybody else and like everybody else, and in business they are interested in getting as good a price as they can. They are going to stand out for as good a price as they can, of course. Now, you represented the Government; you represented the people of the country, and you did not represent the sugar planters.

Mr. MOONEY. I did represent them, too.

Mr. HUSTED. You represented the people of the country and you only represented them as a part of the people.

Mr. MOONEY. Yes, sir.

Mr. HUSTED. But not as sugar planters?

Mr. MOONEY. Certainly not.

Mr. HUSTED. It was your duty to secure as low a price as possible and when you invited those people to meet with you and said, "Let us see if we can not get together on a fair price," it seems to me that you put yourself at a great disadvantage. That was not the course that the Attorney General pursued with the beet-sugar planters. He sent for the Sugar Equalization Board and said, "Gentlemen, from the facts in your possession and as the result of your investigations, what do you consider a fair price for beet sugar?" They told him 10 cents, and he then served notice upon all the beet-sugar planters that 10 cents was the price, or he put the burden of proof upon them to show that 10 cents was not a fair and reasonable price. The burden was put upon them. He said to the board, "That is the price, and I rely upon you to confirm that price and act in accordance with it."

Mr. MOONEY. That is what we did.

Mr. HUSTED. Here, in this case, you got together, and said, "Let us see if we can not come to an amicable agreement." Now, I say that was not the right way to negotiate if you wanted to arrive at a fair price from the standpoint of the public.

Mr. SUMNERS. Let us see if it is not. Does it not occur to you that that is the way to approach gentlemen?

Mr. MOONEY. Yes, sir; and that is the only way.

Mr. SUMNERS. It was not as though he was dealing with a bunch of thugs and thieves. Let me ask another question: When these sugar growers came before you, as I understand the chairman to hold, it was your duty to get the lowest price possible. Now, do you understand that it was your duty as the prosecuting attorney of the United States in that district to hold the power of the Federal Government over those people and rob them out of their just deserts—

Mr. HUSTED (interposing). I did not say anything like that.

Mr. SUMNERS. You said he should get the cheapest price for sugar possible.

Mr. HUSTED. Not the cheapest possible.

Mr. SUMNERS. Take the record on that.

Mr. HUSTED. I said he should get a fair and reasonable price from the public standpoint.

Mr. SUMNERS. Why not take the record? That will show. We have the right to bring people all the way from New Orleans to testify about what the district attorney did, and now you are taking the attitude of holding this record back.

Mr. MOONEY. Shall I proceed?

Mr. HUSTED. Yes.

Mr. MOONEY. I want, perhaps, to elaborate a little bit on that, because the chairman's conception of what occurred and my own view of it are different on this very material point. I had no opportunity to know what the Attorney General had done in regard to beet-sugar producers, because I was in Louisiana. It may be that my sources of information were not as direct and positive, owing to circumstances beyond my control, as were his sources of information in regard to the beet-sugar crop. I had to seek information. The result of it was that one member of the subcommittee, as I have already stated, was for 17 cents, and the six other members were for figures ranging from 17 to 20 cents. I, representing the Government, insisted upon the low figure and obtained it. Judge Milling was there, and Judge Milling knows that every word I say in regard to what occurred and what was said at the meeting is true. As I have stated repeatedly, Mr. Pipes was the only man who voted for as low a price as 17 cents, and that was the price fixed for prime plantation yellow. It was fixed at that because I would not yield any further than that. I believe that, perhaps, my methods might have been a little different, but I tried to be as politic as I could in dealing with those gentlemen.

I realized that they were gentlemen engaged in a legitimate business and anxious to operate and continue that business and harvest their crop within the law. I did not make any threats against them, but I treated them as good citizens who were entitled to all the information that the Department of Justice could give them as to what the Department of Justice would consider to be a fair price, and at what price the presumption would arise that they were selling fairly. As a result of that particular conference, I think that in effect what I did in Louisiana was precisely the same as what was done in relation to the beet-sugar growers.

Mr. HUSTED. I think it was utterly different. You have showed that it was absolutely different. In one case, it was the result of negotiations with the people themselves. As a result of those negotiations you came to an amicable adjustment with them.

Mr. MOONEY. They accepted my figures.

Mr. HUSTED. In the other case the price was fixed, and notice was served upon them that they could not sell above that price.

Mr. MOONEY. They accepted that figure. In the Attorney General's telegram to the beet-sugar growers they were asked to concur in that, and he stated yesterday that practically every beet-sugar grower of any consequence did concur in it.

Mr. SUMNERS. In the beet-sugar situation, the Attorney General called upon this Sugar Equalization Board for their information and judgment, and is it not reasonable to suppose that the Sugar Equalization Board before coming to a conclusion as to what would be a fair price did investigate the beet-sugar situation, and talk with the growers, either individually or through their agents.

Mr. MOONEY. I assume that they must have done so.

Mr. SUMNERS. How did you arrive at that figure of 17 cents?

Mr. MOONEY. The figure of 17 cents was easily arrived at after we saw that the crop cost as much or more than the crop of the year before, and that there was only one-half of a yield. The Sugar Equalization Board had, as I have stated, already secured production cost sheets from the Louisiana planters covering, I believe, three years preceding 1918, and upon that showing they had fixed the price at 9 cents per pound for granulated sugar. Now, if each pound of sugar cost twice as much to produce in 1919 as it cost in 1918, it does not require much mathematics to know that twice 9 is 18, which would represent the price of granulated sugar, and that would mean 17 cents for prime plantation yellow.

Mr. HUSTED. Do you proceed upon the theory that because they had only half a crop they were entitled to double the price?

Mr. MOONEY. I might say that that was the largest factor in reaching my conclusion; yes, sir.

Mr. HUSTED. In other words, you proceeded upon the theory that because the plantation only had a 50 per cent crop yield the man who ran the plantation was entitled to just exactly as much profit as if he had had a maximum crop?

Mr. MOONEY. If that profit the year before had been fixed by a governmental agency as a fair profit, I concurred in that view; yes, sir.

Mr. HUSTED. Well, I did not understand that they had done that.

Mr. MOONEY. Well, the Equalization Board had agreed, at any rate, that 9 cents showed, I believe, about 8 per cent on the investment; and if the Equalization Board agreed to that price, with all the data they had before them, they were a greater authority on that point than I could possibly hope to be in the few days given to me. And I had the testimony of Mr. Zabriskie, under oath before the Agricultural Committee less than three weeks before this date, that everything that went to make up the 1919 crop showed that it was made under an additional expense—not that it cost the same to produce that crop that it did the 1918 crop, but that it cost more.

Now, there is just this feature that I would like to make clear to the committee, and then I want to tender myself for examination by the committee:

Many years ago, when the question of the McKinley bounty arose, a will in Louisiana left the estate in such a shape that it became necessary to determine whether or not a party who raised cane and sold it to the factory was a "producer of sugar," that being the expression that was used in the tariff legislation, or whether the man who ground the cane and manufactured it into sugar was the producer of sugar. That case is decided in 173 U. S., 389; and the Supreme Court passed upon it, by reason of the Federal question, by reason of the interpretation of a Federal statute being involved; and it used the following language:

So the one who raises the cane is the one entitled to be considered the producer of the cane, but he is not the producer of the sugar; that appellation is reserved for him who turns out the finished product.

Now, in Louisiana they have a peculiar system, perhaps, and one that this committee may or may not be familiar with, and that is that around each of these larger plantations on which they have a refinery or factory there are a number of cane growers, men who either lease

land from others and produce cane and sell it to the factory, or men who own their little farms and raise the cane and sell it to the factory. All of those men have contracts. Those contracts are entered into early in the year, and they are predicated upon the price of sugar; that is, what they get for their cane is determined by the price of sugar; 17-cent sugar means that they get 100 pounds of sugar for each ton of cane, and, therefore, they would get \$1.70 for 100 pounds of sugar, or 1 ton of cane—

Mr. MILLINGS (interposing). \$17 for 1 ton of cane?

Mr. MOONEY. Yes; \$17 for 100 pounds of sugar or 1 ton of cane. Now, I have never believed and do not to-day believe as a legal proposition that we could have regulated the price of cane. I believe that the Louisiana cane grower could have told the factory men, "We have had a disastrous year, and we can not sell cane at \$17 a ton; we must have \$25 a ton;" and the Government was powerless to regulate the producer of that cane.

Mr. HUSTED. I think you are quite right about that.

Mr. MOONEY. There were one hundred and twenty-odd factories in operation in Louisiana last year and there are over 100,000 cane growers; so that if they had insisted on a larger price for their cane, their cane would either have rotted in the ground because the factories would not have taken it at that price, or the price of sugar would have been measurably increased—and they were beyond the reach of the Lever food-control law.

Mr. HUSTED. What bearing has that on this question?

Mr. MOONEY. Because they were in this committee; they were in this conference with us; they agreed to accept that price for their cane. They voluntarily came into this thing. My object was to arrive at an arrangement; and the question has been asked several times whether an amicable arrangement was to the advantage of the whole public. Undoubtedly, when I got men who were beyond the reach of the law to come in and say, "We will sell our cane at the lowest possible fair price in order that this article of general consumption shall be sold as cheaply as possible to the general public," I think it was my plain duty, not only as a district attorney, but as an American citizen, to do that.

And they did come in; and it was the only way you could reach them, through their voluntary acquiescence in this price. If I had walked in there with a big club, and the cane growers had said, "We have got nothing to discuss with the district attorney," and they had walked out and informed the men that owned the mills that cane was worth \$25 a ton, I would have been powerless to bring the price of sugar down to 17 and 18 cents.

Mr. HUSTED. I guess if the price had been fixed at 15 cents, the cane growers would rather have sold their cane than to let it rot in the fields?

Mr. MOONEY. Well, you were not in that committee. I doubt it very much. I can say this, for the benefit of the chair, that Judge Milling, who is sitting right there [indicating]—Judge Milling is a lawyer; he is also a practical cane grower; he has been very largely interested in legislation in regard to sugar for many years; he comes from the sugar district; and he stated to them that he did not believe that any Government could fix an unfair price; and that if they

undertook to cause the cane grower to agree to a price that was unfair to him, he was perfectly willing to abide by the consequences himself, pay the cane grower what his cane was worth, and if the Government undertook to send him to jail, he was willing to go to jail. Now, that was the statement that was made, and that shows that the cane grower would not have acquiesced.

Mr. HUSTED. Did you consider the proposition of fixing a marginal profit on the cost of manufacturing the sugar?

Mr. MOONEY. I did; yes, sir.

Mr. HUSTED. If you had done that, that would have eliminated this cane situation entirely, would it not?

Mr. MOONEY. I think that is so impossible, if the Chair will permit me to say it—and I say it with all due respect—it is so impossible a plan, that outside of my considering it—

Mr. HUSTED (interposing). Will you state why you consider it an impossible plan to fix a marginal profit on the cost of production?

Mr. MOONEY. I will. Because, as Mr. Pipe's letter indicates, there was a gentleman who would have been willing to sell his sugar upon an estimated cost, we will say, of 12 or 13 cents a pound; he did not know when he commenced to grind his cane, and the market was bare and crying for sugar, but what he would have to sell his sugar for 17 and 18 cents, and then lose money on his field operations; he did not know that; there was no way by which he could know that. And they would have had to hoard that whole crop until that sugar was made, to the last ounce, before you could have told them, on a marginal basis, what they could have got for their sugar. It was an absolutely impossible proposition. The sugar was being turned out daily, and the public was crying for it, and that was the situation—

Mr. SUMNERS (interposing). Let me ask you this question: If the farmer asked \$25 a ton for this cane, was there anything in the law to prevent him from selling at that price, if he could get it?

Mr. MOONEY. Absolutely nothing.

Mr. SUMNERS. Now, if the manufacturer had bought that cane at \$25 a ton and turned it into sugar, is there anything in the law to prevent the manufacturer from making a fair manufacturer's profit?

Mr. MOONEY. Absolutely nothing.

Mr. SUMNERS. Then is there anything in the law that would prevent the manufacturer from writing into his selling price, or the price at which he would sell the sugar, the cost of his raw material plus a reasonable manufacturer's profit?

Mr. MOONEY. Absolutely nothing.

Mr. CLASSON. Let me ask you this question, as a matter of curiosity: You say that the price of 17 cents a pound, or \$17 a hundred pounds, for sugar means that the grower gets \$17 a ton for his cane?

Mr. MOONEY. Yes, sir.

Mr. CLASSON. Well, if one ton of cane produces 100 pounds of sugar, where does the manufacturer's profit come in?

Mr. MOONEY. Well, they manufacture more than 100 pounds of sugar to a ton of cane. But years of experience have shown—of course, like all other big questions, this has been thrashed out almost to the last penny—years of experience have shown that that is the practical way of working this proposition.

Mr. CLASSON. Then it is the difference between—

Mr. MOONEY (interposing). It is the difference between 100 pounds and the actual yield of sugar per ton of cane. Some of these practical

sugar men may give the committee a better explanation, but that is the way I have understood it.

Mr. SUMNERS. I want to ask you one question: Looking at that case, and the general situation there, from the standpoint of a prosecuting attorney, with such facts as you could get from whatever sources you had available, what you had in mind were the probabilities of procuring conviction in a prosecution?

Mr. MOONEY. Well, do you mean so far as the——

Mr. SUMNERS (interposing). On the charge of profiteering?

Mr. MOONEY. Do you mean, so far as the sugar producer was concerned?

Mr. SUMNERS. Yes—any of the people that you dealt with?

Mr. MOONEY. I believe the proposition was this: If we had agreed upon 1 cent or 2 cents even, above the price we had agreed to, no convictions would have been possible.

Mr. SUMNERS. Well, you are talking about an agreement. I mean, conditions down there in Louisiana being as they were, could you have secured a conviction for profiteering?

Mr. MOONEY. Well, of course, that is a matter of speculation. But I will say that the sentiment in the city of New Orleans, and with the juries that I come in contact with, is so much in favor of letting down the bars and letting things take their natural course to-day, that no man would have been successfully prosecuted, or would have been convicted, by a jury of his peers in that city, by reason of having accepted a fair market price for his product—or any price if it was the market price. And the market price, without this agreement, would have been——

Mr. SUMNERS (interposing). Did you have any judgment about the situation as a prosecuting attorney on the theory that you could not get an impartial jury, or an unbiased jury, to try the cases? What were the facts that you had before you as a prosecuting attorney to warrant you in believing that you could not have obtained a conviction on the basis of those prices?

Mr. MOONEY. Well, no, absolutely, I do not feel that I could have. I believe that right now, with the lights before me, that even at a higher price, I would not have been justified in asking a grand jury to indict any of those gentlemen for the prices at which the sugar could have been and would have been sold at that time.

Mr. SUMNERS. As I understand your situation when you went before that committee of gentlemen, you were simply in the attitude that you were the prosecuting attorney for the Federal Government.

Mr. MOONEY. Well, I took a little broader view than that.

Mr. SUMNERS. Where did you get a right to take a broader view?

Mr. MOONEY. I am an American citizen.

Mr. SUMNERS. Well, I do not know——

Mr. MOONEY (interposing). I want to be right; so far as this committee is concerned, I want to be perfectly fair. I did not intimate to the cane growers at any time that the possibility of a prosecution from me entered at any time into the discussion that I had with them at all. They were beyond the reach of the criminal statute that we relied upon to keep people from exacting an unfair price; and they knew it and I knew it at that time. So that, so far as that part of the committee is concerned, I was not appearing before them as a prosecuting officer, but I was appearing before the committee as a

whole, as United States district attorney charged with the enforcement of the Lever food-control act, which made it unlawful to charge an unfair price for any article of food named in the statute, and that, of course, affected indirectly the producer of cane.

Mr. HUSTED. Did you make any attempt to ascertain the cost of producing the 1920 sugar crop in Louisiana before you fixed that price?

Mr. MOONEY. I made every effort.

Mr. HUSTED. You made an effort to ascertain the cost of producing that crop?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. What do you consider the most efficient factory in Louisiana?

Mr. MOONEY. That would be hard to say.

Mr. HUSTED. Well, mention two or three of the most efficient factories which produce sugar in Louisiana at this time.

Mr. MOONEY. Well, we have four gentlemen here, and I think they are very representative of producers of sugar. When it comes to the manufacturing end of it, they are much more competent to answer than I am.

Mr. HUSTED. Well, can you mention three or four of the most efficient factories in Louisiana?

Mr. MOONEY. Yes; certainly. I would consider the factory that Judge Milling operates as a typically good factory; and that factory did not turn a wheel this year, because the crop was so short. And I can mention, perhaps, the Godchaux people, who are perhaps the largest growers of cane, and their results were negative this year. I can mention Mr. Pipes, whose letter I have read to the committee, who grinds sugar for six plantations of his own, and a good many good-sized producers in the State. Those results are all known.

Mr. HUSTED. What I want to find out is, what was the most efficient, or what were the two or three most efficient factories which produced sugar of the 1920 crop?

Mr. MOONEY. By "most efficient" do you mean those that made the most money?

Mr. HUSTED. No; those produced at the lowest cost.

Mr. MOONEY. I think that the cost of producing sugar was pretty much the same.

Mr. HUSTED. You think that the cost of producing at the different factories was pretty much the same?

Mr. MOONEY. Yes, sir; pretty much the same.

Mr. HUSTED. Do you know the lowest cost at which sugar was produced from the 1920 crop?

Mr. MOONEY. No, sir; I have not those figures.

Mr. HUSTED. Did you make any attempt to get those figures before you agreed to the price?

Mr. MOONEY. I could not, because the cost involves the grinding, and the grinding season had not commenced.

Mr. HUSTED. And at the time you fixed the price—which was November 8?

Mr. MOONEY. Yes, sir.

Mr. HUSTED (continuing). Had no sugar been ground from the 1920 crop at that time?

Mr. MOONEY. Maybe one-half of 1 per cent, or something like that; they were just beginning.

Mr. HUSTED. Did you make any attempt to ascertain the cost of grinding that one-half of 1 per cent? Did you make any attempt to ascertain the cost of producing it?

Mr. MOONEY. No, sir; because that would have been impossible at that time?

Now, I just want to put myself straight in the record: What occurred before November 8, I understood before I came before this committee, had nothing to do with my agreeing to a fair price for the product on November 8. I could load and burden the record with documents and cost sheets at this time simply to perhaps establish the correctness of our judgment at that time; but of course that would not be pertinent. I did not have that before me at that time.

Mr. HUSTED. Were any cost figures available at the time you fixed the price?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. What figures were they?

Mr. MOONEY. Those were the figures that had been submitted to the Equalization Board on the preceding crop.

Mr. HUSTED. Did you have those figures before you at that time?

Mr. MOONEY. The actual figures, I did not.

Mr. HUSTED. You had no actual figures before you?

Mr. MOONEY. I think there were some actual figures.

Mr. HUSTED. What actual figures did you have before you when you fixed this price of 17 cents?

Mr. MOONEY. Mr. Dickinson, who is here, and who will appear before the committee, and Mr. Chaffe, who will appear before the committee, will both tell you, I think, that they went over the cost of the crop with me very carefully. Now, those were producers, of course, but it was only from the producers that I could procure those figures.

Mr. HUSTED. Of course. Did you have any cost sheets from them?

Mr. MOONEY. I did not preserve them; they gave me cost sheets.

Mr. HUSTED. They gave you cost sheets?

Mr. MOONEY. I do not know whether it was the detailed cost sheets.

Mr. HUSTED. Or was it merely information that they gave you?

Mr. MOONEY. Information and data; yes, sir.

Mr. HUSTED. But they gave you no cost sheets, such as were supplied to the Sugar Equalization Board, for example?

Mr. MOONEY. I do not know that I would have understood them if they had. I only wanted results. If a man told me it cost so much to produce a ton of cane, I could have understood that.

Mr. HUSTED. Before you arrived at that decision and took that action, did you take any advice from an expert on sugar in Louisiana?

Mr. MOONEY. If an expert is one who has spent a lifetime in the business, I certainly did.

Mr. HUSTED. Do you refer to the producer?

Mr. MOONEY. Yes, sir; I certainly did.

Mr. HUSTED. You consulted the producer, who was producing part of this crop?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Well, did you consult any outside experts on sugar before arriving at these prices?

Mr. MOONEY. Mr. Rainold, who now is a member of the quotation committee of the exchange at New Orleans, and who is a member

of my fair-price committee, conferred with me daily about this; yes, sir.

Mr. HUSTED. Did you ask the advice of the Sugar Equalization Board here in Washington as to what would be a fair price?

Mr. MOONEY. No, sir. I had Mr. Zabriskie's sworn evidence, given just three weeks before. I did not think it was necessary to ask him if that was true; he had already sworn to it.

Mr. HUSTED. Did you know that Mr. Zabriskie, as president of the Sugar Equalization Board, had been negotiating for the purchase of the Louisiana crop at 15 cents, and that price of 15 cents had not been turned down by the producers in Louisiana?

Mr. MOONEY. My understanding of that situation was entirely different from the chairman's conception of it; and Mr. Pharr, the gentleman with whom that was discussed, and Mr. Dickinson, who was on that committee, are here and they can explain that better than I can. But my understanding was quite different from the chair's understanding; in other words, that there was no offer. I believe Mr. Dickinson, in talking about it since, has used the expression that they were "mere messenger boys up here," and that they had no authority to negotiate for the sale of the crop and they did not understand that they were offering the crop—

Mr. HUSTED (interposing). Well, you consider Mr. Zabriskie a man of pretty good judgment, do you not?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. A man of good standing and a man of high character and responsibility—personal responsibility, do you not?

Mr. MOONEY. Yes, sir. I do not know the gentleman personally, but I presume from the position that he has occupied that he is. He may be a little biased because of his connections and a little prejudiced, for instance, against the Louisiana sugar industry. I have heard him criticized pretty freely on that account, but that is the only criticism I have heard of Mr. Zabriskie.

Mr. HUSTED. He gave it as his opinion, in one of our hearings, that he could have purchased the entire Louisiana sugar crop for 15 cents.

Mr. MOONEY. He may have thought so; I doubt it.

Mr. HUSTED. You do not agree with him?

Mr. MOONEY. No, sir; I do not.

Mr. HUSTED. Did that influence you at all, the fact that negotiations had been under way between the Sugar Equalization Board and the producers on the basis of 15 cents for the entire crop?

Mr. MOONEY. Yes, sir; it did.

Mr. HUSTED. Did that influence you at all in arriving at your figure of 17 and 18 cents?

Mr. MOONEY. It certainly did; yes, sir.

I would like just to make this additional statement in that connection: The letter, I think, from Mr. Figg, of the Department of Justice, stated, as the Chair has stated, that it was his understanding that the Louisiana crop had been offered at that figure; and I discussed that phase of it with these gentlemen and that is how I first learned what had actually occurred here. And at the same time, of course, we fixed on this price; sugar was quoted—I do not know whether these are in the record quotations of the Louisiana Sugar Exchange during this period. I have a certified copy of it. If it is not in the record, I would like to have it inserted.

Mr. HUSTED. Well, it is in the record that they ranged all the way between 15 cents and some twenty-odd cents.

Mr. MOONEY. Well, that is wrong. I have the certificate here from the president of the Louisiana Sugar Exchange, and I think it is pertinent; and if the Chair will permit it, I would like to read the certificate and file it.

Mr. HUSTED. You say you have a certified copy of the record of the quotations during what period?

Mr. MOONEY. May I read it?

Mr. HUSTED. Certainly.

Mr. MOONEY. This is addressed to me, under date of March 26, 1920.

Mr. HUSTED. Who is that from?

Mr. MOONEY. It is from R. M. Murphy, president, and P. F. Spitzfaden, secretary, under seal of the Louisiana Sugar and Rice Exchange.

Mr. HUSTED. That is what we want, exactly.

Mr. MOONEY. The certificate is as follows:

LOUISIANA SUGAR AND RICE EXCHANGE,
New Orleans, March 26, 1920.

Mr. HENRY MOONEY,
United States District Attorney, City.

DEAR SIR: Our official records show that the first receipts of Louisiana yellow clarified sugar, which arrived here on October 23, 1919, sold on this exchange that date at 20½ cents a pound. The second receipts of Louisiana yellow clarified came in on October 24 and sold on the exchange the same day at 20 cents. Plantation granulated sold at 22½ cents on November 3, and was quoted at that price on the 4th and 5th, with tone very strong those three days. Plantation granulated sold at 20½ cents on November 6, with the tone steady. Quotations were then withdrawn owing to conferences with your office concerning price agreement.

Yours, very truly,

R. M. MURPHY, *President.*

Attest.

[SEAL.]

P. F. SPITZFADEN, *Secretary.*

Mr. HUSTED. Well, does that give the lowest price at which sugar was sold during that period?

Mr. MOONEY. It gives the price at which this grade of sugar was sold, and it does not vary at all.

Mr. HUSTED. Well, it gives certain quotations on certain dates.

Mr. MOONEY. Yes, sir.

Mr. HUSTED. But does it purport to give the high and low, or the low quotation, on any trade during that period?

Mr. MOONEY. Well, I do not understand that there can be two quotations of any considerable range on granulated sugar on the same day; and it quotes granulated sugar, and it quotes yellow clarified sugar.

Mr. HUSTED. Well, I want to be put right if I am wrong. As I understand it, there are only quotations in that certificate of two or three days in a comparatively long period?

Mr. MOONEY. No, sir. We were only interested in the quotations of the Louisiana crop, as I have been explaining to the chair, was just beginning to come in; and I stated, I believe, that a very small, infinitesimal portion of the crop had been ground at the time of our meeting, November 8. They were just beginning to grind. And it says in this certificate, "the first receipts;" so that it covers the

period to November 8 from the time of the first receipt of Louisiana sugar. It says:

The first receipts of Louisiana yellow clarified sugar, which arrived here on October 23, 1919, sold on this exchange that date at 20½ cents a pound.

Those were the first receipts. And then it states every sale that was made, and every quotation that was made from them until the withdrawal of quotations, due to the conference that we had as to what would be a presumptive fair price for the article. I think it includes everything, Mr. Chairman.

Mr. HUSTED. Well, I think it was Mr. Zabriskie who stated that there was a very wide range of the market quotations of sugar in Louisiana during this period, and that they ranged all the way from 15 to 21 cents.

Mr. MOONEY. Well, I can explain that, perhaps. The American Sugar Refining Co., a month ago and for a long period before and since—I am just approximating the dates now—was quoting standard granulated sugar at 14 cents a pound, and you could not buy a pound of it. Now, if those are quotations that the committee was to act upon, they might just as well have quoted it at 5 cents a pound. They did not sell a pound. And I, in my fair-price committee, have investigated that phase of it from every angle, and if it is a fact that they have quoted it at that price, I will challenge them to produce their books to show that any sugar was ever distributed in New Orleans at any such price. But these [indicating] are the quotations of sugar that was sold, and are the bona fide quotations of men who had sugar to sell and did sell at it these prices.

Mr. HUSTED. To what extent were you influenced by the market prices of sugar in fixing your prices of 17 and 18 cents.

Mr. MOONEY. Well, I was influenced, of course, to this extent: These gentlemen knew what they could get for their sugar. That, of course, was their chief argument, that they had had a disastrous year, so far as the yield was concerned, and here was the evidence as to what they could sell it for. And I have another letter here, that I would like to introduce into the record, if the chairman will permit me.

Mr. HUSTED. Is it responsive to my question at all?

Mr. MOONEY. Yes, sir. During our discussion and answering again the chairman's question as to the most efficient factories, the Godchaux people are people who are recognized as leading producers of sugar in Louisiana, and people who understand business from every angle. Mr. Charles Godchaux was formerly president of the Whitney National Bank. I mention those facts to show that he is a man of considerable personality. He was present at these conferences, and he left the conference at which I determined that we could not consider more than 17 cents as a fair price. He left that conference, in some little huff and temper. Now, the reason he gave was that he had a bad crop, and he knew it.

Mr. HUSTED. Yes.

Mr. MOONEY. And that he could sell his sugar at a price that would bring him out, and that he did not believe he ought to be subjected to an accusation as a profiteer if he only took the market prices.

Mr. HUSTED. Did you think that there was any force in that contention?

Mr. MOONEY. Some.

Mr. HUSTED. Under the Lever Act?

Mr. MOONEY. Some.

Mr. HUSTED. I do not think there was any.

Mr. MOONEY. You do not think that a fair price has anything to do with the cost of the article?

Mr. HUSTED. Yes; but it has nothing whatever to do with market price.

Mr. MOONEY. And if a man can get a price which will let him out, do you think that that is not a legitimate argument for him to use? That was the argument he was using.

Mr. HUSTED. It depends entirely on what you mean by "Letting him out." Under the Lever Act, it is my construction that a fair and reasonable price means a fair and reasonable price based upon a fair and reasonable profit over and above the cost of production.

Mr. MOONEY. Yes; a "live and let live" proposition—exactly.

Mr. HUSTED. And it is not concerned with market values at all.

Mr. MOONEY. All right.

Mr. HUSTED. Now, in Louisiana, you had a peculiar situation. The Cuban sugar had not come into the market. There was a great shortage of sugar. And when your Louisiana sugar came in, of course, the producers could get almost anything they asked, and the price on the Louisiana Sugar Exchange might have had very little relation to the cost of production, or to an unreasonable profit.

Mr. MOONEY. That is true. But Mr. Godchaux's position was in regard to the prices that he could obtain, which were being quoted on the exchange, that those prices indicated to him the probability that he would make a small profit on his crop, and that the determination that 17 and 18 cents were fair prices would indicate to him at a glance that he would be compelled to operate at a loss.

It was at that period in the discussion that I said that if a man knew he was taking a loss at that price, I did not deem the fixing of that price as binding upon him; that he was at liberty to sell his sugar at whatever amount was necessary in order to show a fair profit on his operations; but that the presumption would be against him, and that he would be investigated with a view of the Government's satisfying itself that his profit was only a legitimate profit, and that the price he obtained was a fair price.

Mr. HUSTED. Do you happen to know the lowest cost at which sugar was produced, sugar of the 1920 crop, in the best factories in Louisiana?

Mr. MOONEY. Well, that depends—

Mr. HUSTED (interposing). Well, can you give that information to me?

Mr. MOONEY. The figures in nearly every instance exceed the price that this brought—in nearly every instance. There are very few—the men who made any money at all, or any margin of profit at all, in Louisiana are the exception.

Mr. HUSTED. What do you mean by that? Do you mean to say that there were not any men in Louisiana that made any money on this 1920 crop?

Mr. MOONEY. There were very few, and they made comparatively little money; there were very, very few.

Mr. HUSTED. Where did the money go? Did it go to the cane growers?

Mr. MOONEY. It went to the labor. The cost of the Louisiana crop was due to a number of conditions. One of them was the wet weather—something beyond human control; the seed rotted; they had poor stands; the weeds sprang up; so that the wet weather and the weeds, we might say, ran away with the profit last year. That would be only one way of looking at it.

I just want to get into the record this letter from the district attorney—

Mr. HUSTED (interposing). Before you do that, I want to have this point made quite clear: Do I understand you correctly to say that even the best and most efficient factories in Louisiana did not make a fair profit on sugar of the 1920 crop at 17 and 18 cents?

Mr. MOONEY. I think they did, some of them, make a fair profit.

Mr. HUSTED. Did not some of them make a very handsome and a very large profit at that price?

Mr. MOONEY. Not that I know of; no, sir.

Mr. HUSTED. But you are not prepared to say that some of them did not?

Mr. MOONEY. Well, I am right there all the time, and I keep my ear to the ground, and I have not heard of any cases, or seen any evidences of excessive wealth which would lead me to conduct an investigation of any of those gentlemen. I can say that with all truth and honesty; and I told them at the time that I would make an investigation if I had any reason to believe that any of them made an unfair profit.

Mr. HUSTED. Well, how could you investigate, or how could you prosecute any of them, even if they made an enormous profit by selling sugar at 17 and 18 cents, after you had fixed the price of 17 and 18 cents for Louisiana sugar, and had practically, although not in so many words, stated to them that if they did not sell at a higher price than 17 and 18 cents you would not prosecute?

Mr. MOONEY. Well, that is only a hypothetical question—

Mr. HUSTED (interposing). Well, my question was not a hypothetical question.

Mr. MOONEY. Yes, sir; you said, if they were making exorbitant profits, was I at liberty to prosecute them?

Mr. HUSTED. Oh, yes; if you—

Mr. MOONEY (interposing). So that it is a hypothetical question; and my answer is hypothetical, that I would.

Mr. HUSTED. Do you mean to say that you were at liberty to prosecute them under the Lever Act?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Even if they did not sell at more than 17 and 18 cents?

Mr. MOONEY. Yes, sir; there was absolutely no immunity granted to those people at all; they understood clearly that the purpose in fixing these prices was to fix a presumptive fair price and that if afterwards an investigation showed that that was not a fair price and that they were making profits that they were not entitled to make, they could be prosecuted—if an investigation showed that they should be prosecuted.

Mr. HUSTED. Well, the Attorney General said here before this committee that they could not be prosecuted; that is, that he would not feel that he could have prosecuted anybody in Louisiana who

sold sugar at 17 or 18 cents. The Attorney General said that here yesterday.

Mr. MOONEY. I understood his statement as not being quite that, Mr. Chairman.

Mr. HUSTED. Well, I will read it.

Mr. MOONEY. Yes, sir; because he and I have had the same idea. In fact, I have not prosecuted anybody, and so far as I know the facts have not warranted prosecuting anybody in Louisiana.

Mr. HUSTED. Here is what the Attorney General said yesterday:

Mr. HUSTED. He has already said yes to that, that he could not prosecute under those circumstances?

Attorney General PALMER. I said I would not.

Mr. TINKHAM. He said he would not.

Attorney General PALMER. I did not say I could not.

Mr. MOONEY. That is the point exactly. We are agreed on that.

Mr. HUSTED (reading):

Mr. HUSTED. I did not mean legally, but you could not consistently with your conscience prosecute them after you had made that announcement?

Attorney General PALMER. I would not decide to prosecute; I would not prosecute.

Mr. MOONEY. And we have not prosecuted.

Mr. HUSTED. No; and you would not prosecute.

Mr. MOONEY. I would if——

Mr. HUSTED (interposing). Even though they had made enormous profits in selling at 17 and 18 cents?

Mr. MOONEY. I think that is beside the question. I did not prosecute. I considered this an agreement, as far as I was concerned, that 17 and 18 cents was a presumptive fair price, and the facts subsequent to that agreement justified the presumption, and no gentleman in Louisiana who sold at that figure has been prosecuted, and, so far as I know, there is no likelihood that any gentleman will be prosecuted in Louisiana. That there are no exorbitant profits that I have heard the slightest intimation of; and that is why I say the chairman's question was a hypothetical question, because the way the chairman put it it would be a brazen violation of the Lever Act, and no man can be bound by a gentleman's agreement to sit idly by, if he is a sworn officer of the law, and allow the law to be flagrantly violated; and if it had been violated, gentlemen's agreement or no gentlemen's agreement, we would have had to act, undoubtedly.

Mr. HUSTED. Well, when you fix a definite price for a whole State, for a large section of country, where crop conditions vary a great deal and where the cost of production on different plantations varies a great deal, why, you assume a great deal of responsibility, and you could not be sure that some plantations would not make a very large profit under that arrangement; you could not be sure about that. Some plantations might make a very excessive profit. Now, by fixing that price in that way you put yourselves in a position where you could not, with any face, or with any decency, go into court and prosecute men who did not sell for more than the price you fixed; is that not correct?

Mr. MOONEY. That is the chairman's opinion.

Mr. HUSTED. Is that not your opinion?

Mr. MOONEY. No, sir.

Mr. HUSTED. I would like to know how your opinion differs from mine.

Mr. MOONEY. My opinion differs in this way: That we are discussing a condition which does not exist now and never has existed. As a matter of fact, all the parties to that conference understood that we were trying to get right down to the bottom of the proposition and agree upon a fair presumptive price for the Louisiana sugar, and to the best judgment of everybody, that was the price.

Mr. HUSTED. Well, when was the word "presumptive" introduced into the discussion?

Mr. MOONEY. I expect I introduced it to-day for the first time.

Mr. HUSTED. This is the first time I have heard it in this connection.

Mr. MOONEY. If there is any objection to it—

Mr. HUSTED (interposing). It is not in your telegram to the Attorney General, is it?

Mr. MOONEY. I think it is "prima facie" in my telegram to the Attorney General.

Mr. HUSTED. And it is not in the Attorney General's telegram to you.

Mr. MOONEY. I think it says "prima facie" in the Attorney General's telegram to me, if the chairman will refer to it. And if the chairman will permit me, I will say that there is the difference between "tweedledum and tweedledee" between the words "prima facie" and the word "presumption;" prima facie, a fair price is 17 cents; and presumptively a fair price is 17 cents; and to my notion that indicates and means the same thought.

Mr. HUSTED. Well, I remember a reference in the Attorney General's telegram to you saying that, while he considered 17 and 18 cents rather high—and I am not surprised that he thought it rather high, when in his previous communication to you he thought 14 and 15 cents was about right—he said:

While I consider 17 and 18 cents rather high, I concur, and all contracts above that price are to be abrogated.

And then he said:

I want you to get from these people an acknowledgment that 17 and 18 cents for those grades of sugar are fair and reasonable prices, so that we will have a prima facie case against them in case they sell at a higher price.

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Now, that is the only reference that I see in that telegram to a prima facie case, or a prima facie price, or anything else of the kind. And the Attorney General said in his testimony of yesterday that that was never carried out, and that you never got any statement from the producers in Louisiana that would bind them in a criminal proceeding.

Mr. MOONEY. Well, I do not think that such a thing is possible—that is, to absolutely make it evidence in a criminal case. The body which met did pass a resolution, embodying in the resolution the substance of what the agreement was. And that was a matter of record; and I had in my office all the time a certified copy of the minutes containing that resolution.

Now, to that extent, considering the Attorney General's acquiescence in the price, as evidenced by his telegram, I considered that that was a clear record of what our understanding and agreement was in relation to the price.

Mr. HUSTED. Do you happen to know what the tonnage of the 1920 Louisiana crop was?

Mr. MOONEY. About 121,000.

Mr. HUSTED. About 121,000 tons?

Mr. MOONEY. Yes, sir; as against 280,000 tons last year and the year before.

Mr. HUSTED. As against 280,000 of the 1919 crop?

Mr. MOONEY. Oh, no; just the reverse; the 1919 crop was 121,000 tons, as against 280,000 tons for the 1918 crop.

Mr. HUSTED. Well, we call that the 1920 crop here; we call the crop produced in 1919 the 1920 crop in our hearings.

Mr. MOONEY. Well, that was about 120,000 tons, as against 280,000 tons, as I remember.

Mr. HUSTED. As against a crop of 280,000 tons for the preceding year?

Mr. MOONEY. Yes, sir; it runs about 43 and a fraction per cent of what the other crop was.

Mr. HUSTED. Now, on that crop, an advance of 1 cent a pound would mean something over \$2,000,000 in profits to the producers of Louisiana?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And of course, an advance of 2 cents would mean an additional \$4,000,000 of profits?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. So that every cent, or even a fraction of a cent, in the selling price is quite an important matter, is it not?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And when we are seeking to determine a fair and reasonable price, even fractions of a cent are so important to the buying public that that matter should be gone into with very great care?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. We want to be just to the producers, and we want to give them a fair profit on the cost of production; that is all they were entitled to under the Lever Act?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And it was your duty to prosecute anybody who sold for more than that?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. We are not discussing now the economics of this thing?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. We have got to take the Lever Act just exactly as it stands. Now, as I understand it, in fixing the price of sugar in Louisiana, you were very largely guided by the statements of the producers themselves?

Mr. MOONEY. I can answer that by saying yes, to the same extent that the Sugar Equalization Board had been guided the year before—exactly. The only people that were competent to tell me what that crop cost were the producers themselves; I had to confer with them in order to ascertain, as closely as I could, that the very views that the chair has just expressed—to ascertain as closely as I could the cost of producing the crop the price of which we were then considering; and in order to do that I conferred with the men who were in a position to know what that crop cost.

Mr. CLASSON. The only thing that you could do at that time was to get the cost of production of the cane?

Mr. MOONEY. Yes, sir.

Mr. CLASSON. The growing cane?

Mr. MOONEY. No, sir; it was impossible to get those figures until the cane had been ground. We were doing the best we could, with such light as we had before us.

Mr. HUSTED. Now, you read two letters from canners, I think, did you not?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. The proprietors of large canneries in Louisiana?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Were either or both of those men interested in sugar production?

Mr. MOONEY. Mr. Penick's company, I believe, has a small plantation, but his business is so overwhelmingly the putting up of the grocery grades that the ownership of the small plantation would not have influenced his judgment. I do not think anyone regards Mr. Penick as a producer in any sense; he is a consumer; it is just a drop in the bucket.

Mr. HUSTED. He does not—

Mr. MOONEY. Make sugar? No, sir.

Mr. HUSTED. He does not produce enough sugar to supply his own demands?

Mr. MOONEY. No, sir. He is in the market, and his business is affected detrimentally, as he explained to me, by any high prices anywhere that would tend to make his product a luxury and beyond the reach of the average consumer.

Mr. HUSTED. You spoke of two United States Senators as having been consulted by you as advisers.

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Were either of those United States Senators interested in sugar production in any way?

Mr. MOONEY. No, sir.

Mr. HUSTED. Either as the owners of plantations—

Mr. MOONEY (interposing). No, sir.

Mr. HUSTED. Or as being interested in factories—as producers?

Mr. MOONEY. No, sir. Senator Guion is from Labadieville, in the Parish of Assumption, which is a sugar parish, so he is familiar with the conditions in the sugar district, but is not himself interested in any way, as I understand it, in the sugar industry.

Mr. HUSTED. Were either of these ex-Senators lawyers?

Mr. MOONEY. Both; one of them had been attorney general of the State, the other had been a former partner of Congressman Sanders.

Mr. HUSTED. Do you happen to know whether the producers of sugar, or the refiners of sugar, in Louisiana, or the manufacturers of sugar in Louisiana, were clients of either or both of these men at the time?

Mr. MOONEY. Ex-Senator Foster is not now actively engaged in the practice of law; he is collector of the port of the city of New Orleans. Judge Guion had just returned from Washington, where he had served out the unexpired term of Senator Broussard, who had died, and he was just reestablishing himself. I do not think he had any connections at all that would have embarrassed him in giving

his best judgment in the matter—certainly not any that would have influenced or biased his judgment in any way.

Mr. HUSTED. Well, were either of them acting as counsel for any sugar interests in Louisiana at that time.

Mr. MOONEY. I can say that, to the best of my knowledge, I have no reason to believe that either of them was actuated by any selfish desire, or that they were governed by any selfish interest.

Mr. HUSTED. I think you stated that one of those gentlemen resided in a sugar district?

Mr. MOONEY. Yes; and the chairman interrupted me. That was Judge Guion, who lived in Assumption Parish, in the sugar district; I might say, in the north center of the sugar district; ex-Senator Foster resides in St. Mary's Parish, which is in the northwestern part of the sugar district; he resides in one of the largest sugar parishes in the State. They were both men who knew about the sugar conditions thoroughly. They knew the sugar business, but they were not directly or personally, or through clients, interested in what we were doing at that time, except as good citizens of high standing.

Mr. HUSTED. Did you go into the cost of producing sugar in 1918?

Mr. MOONEY. Do you mean at that time?

Mr. HUSTED. At that time?

Mr. MOONEY. No, sir.

Mr. HUSTED. Prior to the time that you fixed the price for the 1920 crop?

Mr. MOONEY. No, sir.

Mr. HUSTED. Did you go into the question of the cost of production of the crop of the previous year?

Mr. MOONEY. I did not, no, sir, except——

Mr. HUSTED (continuing). As some basis upon which to estimate the cost for the 1920 crop?

Mr. MOONEY. I accepted as final the figures of the Sugar Equalization Board, which had determined that, at 9 cents, the Louisiana planter on the 1918 crop basis was making only a fair and legitimate percentage on capital invested. I did not have a great deal of time, Mr. Chairman; if you will recall, the conference before the Agricultural Committee up here was the last week in October.

Mr. HUSTED. Yes, I realize that.

Mr. MOONEY. My first message to the department, I think, was within a week of the final determination of this question, and I could only take general results——

Mr. HUSTED (interposing). Now, in view of the fact that you did not have very much time to go into this question, and in view of the fact that you had very insufficient data upon which to determine the cost of the production of this present crop, do you not think it was a rather hazardous thing to fix a definite price of 17 and 18 cents for the whole crop at that time?

Mr. MOONEY. Well, we have to dare things sometimes when——

Mr. HUSTED (interposing). I mean a definite price, a fixed, certain price for the whole crop.

Mr. MOONEY. Well, there was no other practical way of dealing with the situation, Mr. Chairman. I have explained that. These cane crops, and everything else, depended upon it, and we could not tell what the cost of grinding would be; we could not tell whether there would be an early freeze, and an early freeze in Louisiana

means an absolute loss to the average planter. Those things were in the future. We could only act with such data as we had; and I did not consider my data insufficient, in a certain sense. The Sugar Equalization Board was charged with ascertaining the facts which the chairman asked me if I had ascertained; and I accepted the facts as found by the Equalization Board as my basis. I thought that was better than for me, a comparatively uninitiated man in that line of business, to undertake to prepare a set of figures for myself.

Mr. HUSTED. Well, I think that was quite right.

Mr. MOONEY. Yes.

Mr. HUSTED. Now, after you got a price of—how much did you say—8 or 9 cents?

Mr. MOONEY. Nine cents.

Mr. HUSTED. Now, you said that the Sugar Equalization Board informed you that if the Louisiana producer sold the 1918 crop at 9 cents he would make a fair profit?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Under the Lever Act?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. A justifiable profit?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Now, taking that as a basis, I would like to ask you to give us all the information you can, taking that as a basis, as to how you arrived at the price of 17 and 18 cents for this present crop?

Mr. MOONEY. Mr. Zabriskie's statement in October, just three weeks before our conference in New Orleans, is my answer to that—the statement which I read, and which says that in every essential element going to make up the expense side of the crop of cane the 1919 crop would be double—that is, considering that the yield would be one-half, that the 1919 crop would cost more (the 1920 crop this committee calls it) than the 1918 crop had cost. In other words, to produce the same poundage of sugar you would have double the cost. That was his statement; and he was still chairman of the Sugar Equalization Board and still in touch with the situation, still having at his finger tips all the data; and that statement was made under oath just three weeks before our meeting in the city; and the same statement definitely went on to the effect that, at 15 cents, many of the planters would lose money. Now, that was as close as he got to a fixed price.

Mr. HUSTED. Now, all of that is also true in the production of everything?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. The inefficient, the least efficient, always lose a little money.

Mr. MOONEY. This was not a question of efficiency down there. As Mr. Zabriskie said, he did not criticize the methods; he believed the Louisiana planters were beyond criticism so far as their industry was concerned. The bad yield was due, as I say, to the wet weather, the rotting of the seed cane, and the growing of the weeds—conditions over which they had no control. And it was not a question of efficiency as it would be in a factory, but a question of the elements over which they had no control and could exercise no control or judgment.

Mr. HUSTED. The loss was chiefly in the field, was it not?

Mr. MOONEY. Largely so.

Mr. HUSTED. There was not so very much loss in the factory?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Will you explain that?

Mr. MOONEY. Because I have a letter from Mr. Kemper, who operates the Sterling factory, one of the largest, I think, and he states in a letter to me he bought cane this year from upward of a thousand cane growers, and, at 17 cents, which was the basis at which he would have to buy the cane from those cane growers, his factory would operate at a loss because of the low yield of sucrose.

Mr. HUSTED. Every factory, of course, runs to best advantage when running to full capacity, because their overheads are spread out over the widest basis and the unit of cost is at the minimum. But the fact it is only producing one-half of a maximum yield does not mean they produce that at twice the cost of the full yield.

Mr. MOONEY. Well, I can see—

Mr. HUSTED. While it costs more, it never costs twice as much.

Mr. MOONEY. That may be true of a factory.

Mr. HUSTED. That is true of a factory.

Mr. MOONEY. That is not true of a cane crop. You have your field hands, you have your machinery, and you have your investment. If your hands can not get into the field because of wet weather, you have them to feed, you have them to pay, and you have all of those expenses, and those run on regardless of weather conditions. Now, with a factory, if a man is operating half time, the factory operative, the person who is employed by the factory, loses also. But in this particular case the cane grower—I am answering now the Chair's question as to what effect it had on the cane manufacturer, the sugar manufacturer; that is, where he came out to the bad he might have run full time. For instance, Judge Milling's factory did not run at all. That meant the cane normally ground at his factory found its way to some other factory. But many of those factories ran just as long as they did at any other time. Some of them, of course, did not, and it meant some factories did not run at all. We won't discuss those. But Mr. Kemper was operating a factory which took the cane from a thousand different growers and he wrote me a letter asking me—I think I can produce that letter; I have it in my file, if the chairman would like to see it—he wanted either myself or Mr. Pendleton, of the Bureau of Investigation, to come into his laboratory and to go through his factory and he would show us at that time that the yield of sucrose from that green cane was so low that, at 17 cents, he was operating at a loss.

Mr. HUSTED. How many producers, approximately, of sugar are there in Louisiana?

Mr. MOONEY. I think some of these gentlemen have the figures.

Mr. MILLING. One hundred and sixty factories, and 120 ran last year. I suppose there are 10,000 cane producers.

Mr. HUSTED. About 160 factories?

Mr. MILLING. One hundred and sixty factories.

Mr. HUSTED. And how many plantations are there?

Mr. MOONEY. The judge has stated there are 10,000 cane growers.

Mr. MILLING. That is only a guess.

Mr. MOONEY. There are a large number of them, I do not know there is any writing here that refers to the number, but there was a

large number, and it runs from 6,000 to 10,000. My own idea was it was about 7,000.

Mr. HUSTED. Many of them. Of course, not a great many of them, but I assume many of those factories—and let us see if I am right about it—many of those factories also own plantations, do they not?

Mr. MOONEY. Yes, sir; and those factories have kept a separate set of books as I understand. They have their field operations, as Mr. Pipes has referred to it in his letter there, and their field operations showed a loss that was made up by their factory operations. In other words, the factory showed a profit which almost absorbed the loss on the field operations. And they do that, as I understand it, on all of the large plantations and they buy their own cane for that purpose at the same figure they buy the outside cane.

Mr. SUMNERS. I just want to ask a couple of questions on the cost of the factory production. I do not know anything about the sugar business, but it occurs to me that if a factory has to grind more tons of cane in order to get the same amount of sugar that the expense per unit of production would be higher for—what do you call that sweet stuff?

Mr. MOONEY. The sucrose matter. That is true.

Mr. SUMNERS. Let me ask you another question on the operation of the factory. Do they not base their charges upon the unit of cane per ton ground of sugar production? Here is what I am trying to get at: Take a factory that grinds, we will say, just to illustrate, 10,000 tons of cane; now, when there is a little crop, and even if they get more for their sugar they do not increase their factory profits, as an ordinary proposition, when sugar is selling higher than they do on what they charge when it is lower?

Mr. MOONEY. You mean quantity production in one event—

Mr. SUMNERS. I mean an increase of 1 cent a pound for the sugar or something like that—I will withdraw that question and when some of the gentlemen who are practical operators get on the stand, I will ask them.

Mr. MOONEY. As I understand the question—

Mr. SUMNERS. I will withdraw the question.

Mr. MOONEY. The unit of profit, as I understand it, is a sliding scale on the purchase price of the cane tonnage. Mr. Chairman, I just want to ask your indulgence for a moment. I have here a letter from the United States attorney at Memphis, and we were speaking about the attitude of those planters, and I spoke with particular reference to Mr. Godchaux, who felt he was entitled to what sugar would bring. He went on to say some of the sales were actually consummated, and then comes the formal complaint to the district attorney at Memphis, which I think is perhaps the best evidentiary form of what the planters could have gotten for their cane at that time.

Mr. HUSTED. It does not seem to me what the planters could have gotten—

Mr. MOONEY. I mean what they were getting.

Mr. HUSTED (continuing). in view of the peculiar conditions, has any bearing whatever on the Lever Act, because under the Lever Act you were entitled only to a fair and reasonable price.

Mr. MOONEY. This is evidence so far as the price is concerned, that's exactly what they were getting. And I want to say as a premis

to his argument, he was actually getting those prices and as the investigation itself tended to show

Mr. HUSTED. I have no objection to it, but I fail to see where it has any bearing.

Mr. MOONEY. The Chair has intimated, if I made a mistake of an eighth of a cent a pound in naming 17 cents, I was responsible to the people of the United States for maybe a million or so, and I want to show if we reduced the price of sugar 4 or 5 cents a pound, equally we would save millions of dollars to the people of the United States. And here is a letter addressed to me, dated November 10, 1919, from Mr. William D. Keyes:

UNITED STATES ATTORNEY,
New Orleans, La.

DEAR SIR: The C. E. Kenny Co. of this city has just shown me contracts for the purchase of five cars of sugar from Godchaux Sugar (Inc.), of New Orleans, through Brode & Co. of this city; one car for 22½ cents, delivery November 5 and 6; and four cars for 21½ cents, delivery not later than November 10. These contracts were made on November 5, 1919.

These contracts were made on November 5, 1919. These people evidently have this first car in Memphis holding it for higher prices, or in transit.

I wish you would have this matter investigated, for certainly there could have been no reasonable difference of 1 cent a pound on sugar under contracts made on the same date and at the same time; and besides, all of these contracts are above the Government price.

This letter was dated November 10; the contract, however, was dated November 5, and the agreement was reached November 8.

I wish you would give me some idea about what the result is of any agreement arrived at between the Government and the sugar people. The scarcity of sugar here is something frightful.

Respectfully,

WM. D. KEYES, *United States Attorney.*

Of course, the explanation that Mr. Keyes was seeking is simply that sugar was just coming on the market, and the first car of sugar on a bare market necessarily brought a higher price than sugar delivered five days later. And here is a contract showing 22½ cents for the first car and 21½ cents for the other four cars of sugar actually contracted for and some of it delivered by Mr. Godchaux at the time we had this conference.

Mr. HUSTED. Do you happen to know how many tons of sugar were sold, or sold under contract, prior to the date of the fixation of this price of 17 and 18 cents?

Mr. MOONEY. No, sir; I could not say in the aggregate; but I can say as a matter of fact, they were all abrogated; that every gentleman who had a contract at a higher figure abrogated that contract. Many of them consulted me about it, and there was a disposition on the part of the people who had a contract and who were still willing to pay the higher price for sugar to insist on holding those gentlemen to those contracts, which would have been, of course, an advantage to the Louisiana man. But following our suggestion, they abrogated those contracts and told the gentlemen they would have to sell their sugar at a lower price.

Mr. HUSTED. There were, as a matter of fact, though, some actual deliveries of sugar prior to the date of the fixation of the price, were there not?

Mr. MOONEY. Yes, sir. This letter is evidence of one. But when this telegram was sent out, the understanding was when those contracts had reached the point of the issuance of the bill of lading, where the bill of lading had been issued for the shipment, you could not very well recall it, because you would have the cars in transit. But, as a matter of fact, at that time not a great deal of sugar was moving.

Mr. HUSTED. As a matter of fact, those men who did deliver sugar at those prices prior to the 8th of November were profiteering under the terms of the Lever Act, were they not?

Mr. MOONEY. I do not think so. I investigated some of those, if not all of them, and I believe I investigated all of them where there had been sugar sold, and I have yet to find, where sugar was sold at a higher price, that it was sold at anything like a price where the man made an abnormal profit on his product.

Mr. HUSTED. You investigated all of those cases yourself?

Mr. MOONEY. Yes, sir. I won't say all of them, but I had a knowledge of them.

Mr. HUSTED. How high was sugar sold in price?

Mr. MOONEY. I think most of it ran, just as this letter evidences, around 21½ and 22½ cents. That was the quotation on the sugar at that time for the earlier sugars, and such sales as I have seen were at those prices.

Mr. HUSTED. Has sugar heretofore ever been sold to your knowledge at prices as high as that in Louisiana?

Mr. MOONEY. No, sir; I do not think so; nor has any other commodity been sold as high as present prices.

Mr. HUSTED. I was only inquiring about sugar.

Mr. MOONEY. Yes, sir; but in fairness I wanted to make the general statement in reply; I only wanted to do it for that purpose.

Mr. HUSTED. But there were unusual conditions existing of shortage?

Mr. MOONEY. Undoubtedly.

Mr. HUSTED. Which tended to stimulate the price?

Mr. MOONEY. Undoubtedly.

Mr. HUSTED. Now when, if you happen to know, did the Cuban crop of 1920 come into the market?

Mr. MOONEY. I could not state that with any definiteness; but it was certainly after the turning of the year.

Mr. HUSTED. Do you happen to know whether any of it came into Louisiana, into the port of New Orleans?

Mr. MOONEY. I know a great deal of it came into Louisiana.

Mr. HUSTED. It came into that port?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Do you happen to know whether any of that sugar was refined in Louisiana?

Mr. MOONEY. A great deal of it.

Mr. HUSTED. There are two very large refineries in Louisiana whose chief business it is to refine the Cuban crop; is not that so?

Mr. MOONEY. You mean the Colonial and the Henderson?

Mr. HUSTED. Yes?

Mr. MOONEY. I assume those are the two you speak of; yes sir—and the American.

Mr. HUSTED. Do you happen to know whether any of the Cuban sugar crop that came into Louisiana was refined in Louisiana and sold there at the Louisiana price of 17 and 18 cents?

Mr. MOONEY. I can best answer that perhaps by saying the same inquiry was made to me by Senator McNary during the Senate investigation, and in reply to that I sent him the statistics. There has been no concealment of the fact of the Cuban importations into Louisiana. There had been this terrible shortage of sugar, and when these factories got through grinding their own cane a good many of them ground cane on toll. Mr. Dickinson, who is here and who will appear before the committee, operates a factory which refined a good deal of that Cuban sugar on toll. And those factories ask 2 cents a pound tollage on that.

Mr. HUSTED. In order that the record may show what you mean—I understand what you mean, but you are talking in rather technical language—when you say you grind on toll, you mean refining on toll?

Mr. MOONEY. Refining.

Mr. HUSTED. You mean the factory takes the cane—

Mr. MOONEY. Takes the raw sugar.

Mr. HUSTED. And for a certain charge refines it?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And then delivers the refined sugar back to its owner?

Mr. MOONEY. Back to its owner; yes, sir. None of that sugar I told Senator McNary in my telegram to him, and I repeat to the committee, was disguised so far as I know as Louisiana sugar. There was some confusion which arose in the minds of purchasers who may have honestly believed that was done because, in one or two instances (and perhaps more generally than I was aware of) that sugar in order to distinguish it from standard granulated, went out designated as plantation granulated—not Louisiana sugar and not the standard product of bone-black sugar. That was the purpose of calling it plantation granulated; and the Godchaux people sold a very large quantity of this Cuban sugar which they refined at 10½ cents. That same sugar, as you now see by the prices, is bringing considerably above the price of Louisiana sugar for like quality; and there has never been any attempt on the part of those people to disguise that sugar as Louisiana sugar. In fact, only 450,000 bags of sugar, Cuban raw, were imported into New Orleans this season as against 17,500 last year. Those were facts generally known.

I might state for the committee's information, too, that since the beginning of this sugar trouble—I call it "trouble;" it has been trouble for me—we have had a representative, an auditor of the Department of Justice, on the floor of the sugar exchange daily, and it has been his duty to ascertain the arrivals, destinations, and prices, etc., of sugar; and I am not standing up here merely stating I know these things, because I know them through the efforts of the Department of Justice, and it has been operating in that way, and I believe we have maintained a very careful check.

Mr. CLASSON. Generally, what is the charge for refining sugar?

Mr. MOONEY. Generally, I think about 2 cents. I am not certain, but I had a letter from the Department of Justice in which the department said they considered 2 cents toll as a fair tollage; and when I found these gentlemen who were refining this sugar exacted that figure, I made no further investigation in the matter.

Mr. HUSTED. Did you watch the course of the Cuban market at the time you fixed the price of Louisiana sugar?

Mr. MOONEY. Not particularly.

Mr. HUSTED. And subsequent thereto?

Mr. MOONEY. Not particularly; no, sir. My telegram was that from such information as I had at that time I believed that the situation would be relieved when the Cuban crop came on the market, and I think I stated these gentlemen could market their whole crop at those prices.

Mr. HUSTED. As a matter of fact, it was not relieved, was it?

Mr. MOONEY. There has not been enough sugar produced in the world to relieve the situation, as I understand it.

Mr. HUSTED. Then you say you do not know the prices which prevailed upon the Cuban market—

Mr. MOONEY. I could not say.

Mr. HUSTED (continuing). During November and December, 1919?

Mr. MOONEY. I would not like to state, because those are matters of record, and my recollection may be faulty. I know it rose very, very rapidly.

Mr. HUSTED. After this fixation of price?

Mr. MOONEY. Yes. Chronologically afterwards, but after they also themselves realized they had overestimated and I believe they were some 600,000 tons short in their own crop.

Mr. HUSTED. And there was a rise, as I understand it, of about 4 cents a pound in the price of Cuban sugar within 30 days after this fixation of price in Louisiana.

Mr. MOONEY. Yes, sir—of course the Cuban—

Mr. HUSTED. And it has been testified to here by Mr. Zabriskie that this fixation of price in Louisiana; that is, the naming of an official price under which no profiteering prosecutions could be had, had stimulated the effect on the Cuban market and put up the price of Cuban sugar which was sold in America, and in that way increased the cost to the American consumer of sugar.

Mr. MOONEY. Of course, Mr. Zabriskie is entitled to his opinion. My own opinion is entirely different.

Mr. HUSTED. I would be very glad to hear what you have to say on that.

Mr. MOONEY. The mere fact the Louisiana sugar exchange at the time we obtained the consent of the planters to agree upon a lesser price for their cane was quoting sugar at 3 cents more than the Government considered a fair price, and as a matter of fact sales were being made there at 3 cents a pound above that, shows—that is, if I had been a Cuban planter I would have understood that to be an indication of the American market, and just as soon as this 17 and 18 cent sugar was out of the way, that my sugar would bring the prices that had been offered for the Louisiana crop. That is what I would have deemed it showed.

Mr. HUSTED. I suppose you give the sugar man of Cuba and the people in America who deal with Cuban sugar the credit of knowing of the existence of the Lever Act?

Mr. MOONEY. Yes, sir; but it does not apply to Cuba, as I understand.

Mr. HUSTED. But people who sold in America at excessive prices could be prosecuted and it would be the duty of the Department of Justice to prosecute them.

Mr. MOONEY. People in Cuba?

Mr. HUSTED. Not people in Cuba, but people in America.

Mr. MOONEY. How could the Lever Act touch people in Cuba? If I had been a Cuban planter, how could the Lever Act have had any influence on the price at which I sold my sugar? If the market price in Louisiana, without any Government control or supervision, had been around 20 cents and I realized they had a mere drop in the bucket that would be consumed in two or three weeks, I would simply have folded my hands and run my factory night and day and waited for the consumption of that little dab at 17 and 18 cents and would then have sold my sugar at 21 or 22 cents with impunity to the American buyer. The Lever Act, of course, does not apply to Cuba and could not.

Mr. SUMNERS. I respectfully suggest that, as I remember Mr. Zabriskie's testimony, it was based upon the difference in the effect between fixing the price at 15 cents and 17 cents. The statement, as I understand it, was not that the cutting down of this price, by what is termed here as fixation, from a range of around 20 cents to 17 cents enhanced the prospect of the Cuban sugar; but it was the fact the price was determined upon as 17 cents rather than 15 cents. That is my recollection, and quite clear, of Mr. Zabriskie's statement.

Mr. HUSTED. That is not my recollection of it and I do not think he so testified. As I recollect it, he simply stated that this fixation of price by the Attorney General stimulated the Cuban market. And Mr. McCann was here and Mr. McCann testified that Mr. Zabriskie told him that after the Cuban producers learned that the Attorney General had fixed the price at 17 and 18 cents that then they made up their minds to get some of it, and they started in with their gouge, and the price went up 4 cents a pound.

Mr. SUMNERS. How could the Cuban determine that the action of the Government in cutting the price from 20 cents to 17 cents would give him a better market? I do not think Mr. Zabriskie testified that way.

Mr. HUSTED. He knew the sugar could be sold in America—it is quite simple it seems to me—he knew the sugar could be sold in America at 17 and 18 cents without fear of prosecution. And the minute he knew that he said to himself, "I can get a great deal more than 6½ cents if they can sell in America for 17 and 18 cents, so they certainly ought to divide up with me a part of that and I will put my price up 4 cents, and even then they will get more out of it than I do."

Mr. SUMNERS. But if he knew they were selling sugar on the open market and knew there was no power to keep him from selling his sugar on the open market around 20 cents a pound, if the Government had not fixed the price he would have been stimulated to get a better price on the open market.

Mr. HUSTED. No; I do not think so for this reason, that that was a temporary condition; that was a stimulated market, and the demand was temporary due to local conditions and the Cuban did not know how long they would continue, and he knew the price would have to come down just as soon as his sugar went on the market.

Mr. SUMNERS. He would have sold on the open market, anyhow.

Mr. HUSTED. But that was an official price that the Government fixed, of 17 and 18 cents, and he knew no sugar would be sold below it unless he permitted his sugar to be sold below that price. He was the only man who could reduce that price, he was the only man to reduce

it by allowing Cuban sugar to go in there at a price considerably below that, and he would not be fool enough to do it when he could get 17 and 18 cents.

Mr. SUMNERS. Why would he be fool enough to do it when he knew he could get 20 on the open market.

Mr. HUSTED. But he did not know that; he did not know how long the Department of Justice of the United States would permit that profiteering to go on.

Mr. SUMNERS. Anyhow, that is a thing on which he will have to join issue later.

Mr. BOIES. May I ask you a question? Are those grinding factories also refineries?

Mr. MOONEY. Yes, sir.

Mr. BOIES. In all instances?

Mr. MOONEY. No; not in every instance. All of the larger grinding factories—well, I can not say that, no; but granulated sugar is not made by a majority of the factories.

Mr. BOIES. It is called raw sugar when they get through grinding it, is it?

Mr. MOONEY. Yes, sir. You notice in the price that was discussed there was 17 cents—

Mr. BOIES. I do not care anything about the price.

Mr. MOONEY. I just want to explain in answer to your question—

Mr. BOIES. I know what I am after.

Mr. MOONEY. All right, sir.

Mr. BOIES. And it is to get some information and, if you will answer my question, it will give me the information.

Mr. MOONEY. I will be very glad to do so.

Mr. BOIES. You say there was shipped Cuban cane into New Orleans and ground and refined in Louisiana?

Mr. MOONEY. Yes, sir; not Cuban cane, Cuban raw sugar.

Mr. BOIES. In the raw state?

Mr. MOONEY. Yes, sir; unrefined sugar; what they call raw sugar.

Mr. BOIES. Now this 17 and 18 cents, is that per ton for the cane itself?

Mr. MOONEY. Yes, sir. You mean when the sugar factories in Louisiana buy from the cane grower?

Mr. BOIES. Purchase of the plantation owner.

Mr. MOONEY. Yes, sir.

Mr. BOIES. And is that based on the thought that there is 100 pounds of sugar to be produced from the ton?

Mr. MOONEY. No, sir.

Mr. BOIES. It has no relevancy?

Mr. MOONEY. It has relevancy; yes, sir. As I explained to the gentleman to the left of the chairman, Mr. Classon, the idea is that the difference between 100 pounds of sugar, as I have understood it—these gentlemen are better qualified to answer, but as I have understood it, the excess of the 100 pounds of sugar represents what the factory gets for its work in grinding the cane into sugar, manufacturing the sugar. If they only got 100 pounds of sugar per ton of cane and they paid the same price per ton that they were to get per pound of sugar relatively, they would be grinding it for nothing. Therefore the difference between the 100 pounds and what is actually produced represents the factory's end of it. And that is the result of years of experience, satisfactory to both sides.

Mr. BOIES. Then, generally speaking, these grinding factories sold the raw sugar to the refiners in Louisiana?

Mr. MOONEY. No, sir.

Mr. BOIES. How did they dispose of their raw sugar?

Mr. MOONEY. That is what I wanted to straighten you out on at first. The price that was agreed to——

Mr. BOIES. I do not care anything about the prices; that does not answer my question. To whom did they sell it?

Mr. MOONEY. If the chair will permit me, I think I ought to be allowed to answer the question in my own way. It is not a yes or no question.

Mr. BOIES. It is not a yes or no question, but I ask you to whom the grinding factories sell their raw sugar in Louisiana?

Mr. MOONEY. To the consumer.

Mr. BOIES. To the refiner?

Mr. MOONEY. No; to the consumer.

Mr. BOIES. Their raw sugar?

Mr. MOONEY. Yes, sir; and that was the price of 17 cents for that raw sugar. The Louisiana prime yellow, clarified, and the choice clarified is the standard product—I mean a product recognized the same as granulated.

Mr. BOIES. Whom do you call the consumer?

Mr. MOONEY. The man who buys the sugar.

Mr. BOIES. The raw sugar, before it is refined?

Mr. MOONEY. Yes, sir; you can call——

Mr. HUSTED. You can call the canner a consumer.

Mr. MOONEY. You can call anybody a consumer who uses the sugar. And this prime yellow clarified sugar is used in preference by a great many people to granulated sugar.

Mr. BOIES. I want to know if the grinding factories do dispose of the whole or a part of their product to the refiner or do they refine it themselves?

Mr. MOONEY. No, sir; the factories which do not granulate sugar, which have no granulators, sell the clarified sugar. They sell the prime and choice clarified sugars, which is not granulated sugar. There are only the three qualities. The factories which produce the choice and prime clarified sugars never turn that over to the refiner but sell it direct on the market as a finished article.

Mr. BOIES. Then what sugar does get into the hands of the refiner from these grinding concerns?

Mr. MOONEY. Their own cane and such cane as they purchase. There are, you might say, two grades of factories there, the larger factories which have their granulators and the smaller factories which turn out a product known as prime or choice clarified sugar. And they do not operate together.

Mr. BOIES. Under the Louisiana arrangement was it not very easy for the refiners or factories to so manipulate their books that they could escape prosecution by selling Cuban sugar as Louisiana sugar?

Mr. MOONEY. I do not think so. But I would no more presume they were doing it than I would presume any honest men were stealing. These are all good citizens and their books are open to inspection and I have no reason to believe and never had the slightest intimation there has been any juggling of accounts or changing or shifting of books to deceive the public, the Department of Justice,

or anybody else. And every Louisiana planter or refiner is willing to have an investigation to the fullest extent by the Department of Justice of the business they have done this year.

Mr. BOIES. Suppose they were to keep their books showing the sugar content of Cuban sugar actually below what it was and place the difference over to the credit of the Louisiana sugar. Is there any way of finding that out?

Mr. MOONEY. That could not be done. When we speak of the sugar content we speak of the sucrose in the cane. I mean the reference to that in any testimony I have given referred to the sugar content in the cane that was produced in Louisiana, or the sugar when it comes from the refinery. The Cuban raws, when they come in, the only difference in the result between one of the smaller refineries in Louisiana and a big plant like the American is that with the very best of machinery in the American they get a little better result than the Louisiana refinery gets and, therefore, on a 2-cent toll, the American Refining Co. would make a little more money perhaps because they get more refined sugar out of the Cuban raw than would the Louisiana refinery operating on the same basis.

Mr. BOIES. What is there, in any discoverable evidence, to show whether it is Louisiana sugar or Cuban sugar in the hands of a wholesaler in Chicago—the man who sells to the retail trade?

Mr. MOONEY. I expect that a sugar classer could tell that, a sugar man. I am not sure about that. But I doubt if the average person would know, when it is granulated and refined.

Mr. BOIES. I asked a sugar man the other day if there was any distinguishing characteristic and he said there was not. So that I wanted to be able to ascertain if there was any method by which you could get back at that man in Chicago or some man behind him who sold to the retail man, to see whether he was profiteering or not where these different prices were established under the Louisiana proposition.

Mr. MOONEY. I do not think that there has been any secret made by the Louisiana people; I mean, for instance, now in the invoices, if a man sold sugar at retail in Chicago for 30 cents it ought to be the simplest thing in the world to trace that sugar. I have found it so in my district. If I have a complaint from a retail grocer in some other section of the State, as to the sugar he has bought from the wholesale house, I ask the auditor from the department to call for the invoices all the way down the line and I get a complete history of that sugar. I do not know that there is any more difficulty about tracing that than there is in tracing anything else.

Mr. BOIES. The retail man would not know where that sugar came from.

Mr. MOONEY. He would not but we can ascertain. If he has a suspicion he has been humbugged all he has to do is to call the attention of the Department of Justice to that fact and they will find out where the sugar came from.

Mr. BOIES. Have you ever made any investigations along that line?

Mr. MOONEY. Yes, sir; many of them.

Mr. BOIES. You have?

Mr. MOONEY. Many of them; yes, sir.

Mr. BOIES. Where were they made?

Mr. MOONEY. Where have I made those?

Mr. BOIES. Yes.

Mr. MOONEY. In my district.

Mr. BOIES. Have you made them outside of your district?

Mr. MOONEY. I have had, for instance, with Mr. Hooper Alexander, the district attorney of Atlanta, Ga., who sent me a long list of complaints he had received—I had every one of them investigated and got copies of the original invoice in every case and sent him all the data that was necessary for him or any one else to determine the whole history of that particular sugar.

Mr. BOIES. I believe that is all.

Mr. CLASSON. Do I understand you that yellow clarified sugar is unrefined sugar?

Mr. MOONEY. I think they class it as unrefined.

Mr. GALLOWAY. It is a washed sugar.

Mr. MOONEY. It is a washed sugar.

Mr. CLASSON. It does not go through any refiner?

Mr. MOONEY. No, sir.

Mr. CLASSON. It goes directly from the grinding mill to the consumer?

Mr. MOONEY. Yes, sir.

Mr. CLASSON. Then this other refined Louisiana sugar is granulated sugar?

Mr. MOONEY. Granulated sugar; yes, sir. And that accounts for the two prices. That is what I wanted to make clear to the gentlemen here, that the prime yellow clarified was the finished product, the washed sugar, which goes directly on the market. It is not granulated after that; it goes to the consumer in that shape, and a great many people prefer it to the granulated sugar.

Mr. CLASSON. Is there any Cuban sugar that goes direct from the grinding factory to the consumer?

Mr. MOONEY. I do not know of any. I know all the sugar that has come in has been sugar that has passed through the refiners, so far as I have been able to ascertain.

Mr. HUSTED. Did you, at the time you fixed the prices, entertain any doubt as to whether such action was authorized by law or not?

Mr. MOONEY. No, sir.

Mr. HUSTED. Did you examine into the question, legally?

Mr. MOONEY. Yes, sir. I think what we did was absolutely——

Mr. HUSTED. Do you mean you consulted the statutes to ascertain whether there was any legal authority for such action?

Mr. MOONEY. Mr. Chairman, the situation here was an entirely new situation. As the Attorney General has pointed out, sugar was under the control of the Equalization Board, and then when the question of the Lever Act came up he had a plan of his own, which was generally adopted, of getting the former food administrators to act as the fair-price commissioners in the respective States. And in the State of Louisiana, Mr. Parker, being candidate for Governor, had declined to serve as the fair-price commissioner, and it happened at this psychological and unfortunate moment there was no fair-price commissioner in Louisiana, and therefore I perhaps did have to assume, you might say, the position of fair-price commissioner and district attorney, and there may have been some confusion in my capacities as such. And that is what I meant in my answers to the chair at first, that, not having a fair-price commissioner, I had to assume some of

the responsibility which the fair-price commissioner would have assumed if we had had one.

Mr. HUSTED. At the time you took this action, the President had not conferred upon the Attorney General any war powers, had he?

Mr. MOONEY. I am not certain about that.

Mr. HUSTED. That came later?

Mr. MOONEY. Yes, sir; that is my recollection.

Mr. HUSTED. So that you had no authority to take this action unless it was conferred upon you by the act creating the Department of Justice or under the Lever Act?

Mr. MOONEY. That was, of course, the source of authority.

Mr. HUSTED. It must have been under one or the other, either the act creating the Department of Justice or under the Lever Act?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Can you point out anything under the Lever Act or in the act relating to the Department of Justice, or any amendments to it, that authorizes such action as you took in fixing these prices?

Mr. MOONEY. That is my understanding of the act—that if there is no fair-price commissioner it would be the duty of the law-enforcement division to explain to anyone who asked for advice what they would consider a fair price at which an article could be sold within their district.

Mr. HUSTED. I suppose you are aware of the uniform practice of the Department of Justice in all other cases to absolutely refuse to advise anybody except the Executive, except the President of the United States—

Mr. MOONEY. Yes, sir.

Mr. HUSTED (continuing). As to the construction of a statute. For example, if a Member of Congress asks the Attorney General to construe a statute, the Attorney General won't do it.

Mr. MOONEY. I understand, sir.

Mr. HUSTED. And he does that, he states, because he has no legal authority to do it. Now, how can you distinguish between the ordinary practice of the Attorney General in all other cases and in this particular case under the Lever Act? The Lever Act says the Attorney General shall prosecute wherever anybody subject to the act sells for more than a fair and reasonable price.

Mr. MOONEY. Yes, sir.

Mr. HUSTED. When you fixed the price of 17 and 18 cents, did you not construe in advance, for a whole State, for a whole section, the provisions of the Lever Act—in advance of any prosecution?

Mr. MOONEY. I do not think so, literally. Perhaps as a practical proposition such construction could be placed upon what was actually done; but, as I say, the unfortunate part of it is that not having any other body to which these planters could appeal, in order to ascertain at what price they could market their crop without running the danger of being accused of profiteering, they appealed to me. I appreciated their situation in the matter. It was an emergency—

Mr. HUSTED. Yes, I understand.

Mr. MOONEY (continuing). And did what was the only thing in the world I could do or thought I could do.

Mr. HUSTED. In order to relieve that situation?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Did you not, as a matter of fact, take the law into your own hands in construing the provisions of the Lever Act as applying to the situation in Louisiana?

Mr. MOONEY. As I have understood the rulings of course of the Attorney General's Office, it is the rule of the legal officers of the Government that those matters which come before us properly are only the matters upon which we can give any advice; that the average private citizen coming to him for private advice would be referred to his own attorney. And that is true; we all understand that. In this particular case, however, as I say, owing to the exigency of the occasion, I saw absolutely nothing else to do except what was actually done. And in order to put these gentlemen right (and they certainly expressed a willingness and desire to be put right) I felt that it was no violation of any ruling of the department and I do not know that it is a violation of any actual statute—I do not know that the department is prohibited from giving any advice; I know it is not customary and it has been so ruled and determined, but I know of nowhere where we are absolutely prohibited from counselling when the occasion arises which requires us to do what I did in this particular case. That was my understanding of the situation.

Mr. HUSTED. Do you happen to be aware of the fact that one of the officers of the Department of Justice, one of the assistants of the Attorney General, is reported to have advised him that the course taken in Louisiana was illegal; that is, illegal in the sense that it was unauthorized by law?

Mr. MOONEY. No, sir.

Mr. HUSTED. Are you aware of that?

Mr. MOONEY. No, sir, I was not aware of that.

Mr. HUSTED. I think that is all.

Mr. TINKHAM. Mr. Chairman, I would like to ask some questions of the witness if I may?

Mr. HUSTED. I have no objection.

Mr. SUMNERS. As it is nearly 1 o'clock, I suggest that we take a recess until 2 o'clock.

(The subcommittee thereupon took a recess until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee reconvened pursuant to the taking of the recess.

Mr. HUSTED. Judge Milling, will you please take the stand?

TESTIMONY OF MR. ROBERT E. MILLING.

(The witness was duly sworn by Mr. Husted.)

Mr. HUSTED. Judge, do you prefer to make a statement? If you do, we will afford you the opportunity to make a statement.

Mr. MILLING. Just at the pleasure of the committee.

Mr. HUSTED. Or I will question you.

Mr. MILLING. Whatever the committee desires about it. I can make a statement or submit myself to questions.

Mr. HUSTED. Unless you prefer to make a statement, we can bring out what we want by questions. Now, Judge, are you a sugar planter?

Mr. MILLING. Well, no. I could not class myself as a sugar planter. I am president of a corporation that owns a plantation of about 5,000 acres in the field (well, it is a combination of plantations; several plantations) and a sugar factory of about 1,000 tons capacity, although my interest in that is not large. Possibly, I own 12 or 15 per cent—no; I do not own over possibly—well, a small proportion of the capital stock; I do not know exactly. And in that connection I want to state that I am a lawyer and I am attorney of the American Cane Growers' Association and I have represented them for a number of years and have been present at most of the meetings and most of the conferences; was here in Washington at the time the matter was discussed with the Attorney General and had frequent discussions and talks with the Food Administration when they were in existence, etc.

Mr. HUSTED. Have you ever been actively engaged yourself in the growing of cane or in the manufacturing of raw sugar or in the refining of sugar?

Mr. MILLING. No; no further than I have stated to you. I do not live upon the place nor I do not—

Mr. HUSTED. What you know about the costs, then, of growing the cane or manufacturing the raw sugar or refining the sugar is second-hand knowledge?

Mr. MILLING. Is the reports furnished me by the plantation, the cost sheets, balance sheets, etc.

Mr. HUSTED. What is the normal factory cost per ton in Louisiana of manufacturing raw sugar from the cane?

Mr. MILLING. Well, that would vary with the various factories. It would depend upon labor conditions, the capacity of the factory, whether or not it ran to capacity or whether it was shut down part of the time. It would depend largely, too, upon the question of fuel and the efficiency of labor, and everything of that kind.

Mr. HUSTED. Under normal conditions, though, there is not, I assume, a very wide variation, is there?

Mr. MILLING. Well, yes.

Mr. HUSTED. In the cost of manufacturing raw sugar from the cane?

Mr. MILLING. Yes. There is for the reason that the process of manufacturing sugar from cane has been rather an evolution in Louisiana; it has grown up.

Mr. HUSTED. You mean to say that in some factories you have old-fashioned methods?

Mr. MILLING. Yes, that is the idea exactly.

Mr. HUSTED. And in other factories you have up-to-date methods?

Mr. MILLING. Yes, by which it can be done for less.

Mr. HUSTED. Will you give the limits of the variations in cost per ton a year ago; that is, in manufacturing the crop of 1919, the crop of a year ago—not the present crop. Do you know what the variations in cost were?

Mr. MILLING. I could not give you the limits and I can show you why I could not. You would have to go to each individual.

Mr. HUSTED. It has been stated here and I think it was based upon information obtained from the Agricultural Department, that the variation ranged from, I think, about \$51 per ton up to \$160 per ton.

Mr. MILLING. You must be mistaken about that. I should imagine it would vary from——

Mr. HUSTED. I am quoting now from a publication of the United States Tariff Commission——

Mr. MILLING. I should think that the actual cost of manufacturing would range from a minimum of \$1.60 to \$1.75, to possibly \$5 a ton for the manufacturing of cane.

Mr. HUSTED. That is manufacturing from the cane?

Mr. MILLING. To manufacture a ton of cane, which would give you about anywheres from 95 to 125 or 130 or 140 pounds of sugar owing entirely to the sucrose content of the cane.

Mr. HUSTED. I am quoting now from a publication of the United States Tariff Commission.

Mr. MILLING. All right; what is it?

Mr. HUSTED. It is entitled "Costs of Production in the Sugar Industry" and on page 10 of that publication, section 2, "General discussion of the basic tables" it says that the average cost in Louisiana in 1916 and 1917, averaged by factories, was from \$51.01 per ton to \$162.51 per ton in Louisiana.

Mr. MILLING. That is not cane; that is sugar?

Mr. HUSTED. Yes.

Mr. MILLING. I was talking about cane. The cost of manufacturing a ton of sugar——

Mr. HUSTED. I was talking about sugar, not cane.

Mr. MILLING. There is where the initial cost starts, the manufacturing of a ton of cane. Of course the cost of a ton of sugar would depend largely upon the number of tons of cane you manufacture in order to get a ton of sugar out of it you see.

Mr. HUSTED. Would you say that these figures I have quoted were about correct for the 1916-17 crop in Louisiana?

Mr. MILLING. Really, I could not say. I never examined the figures and I never approached the subject from that angle. What we talk about is how much it costs per ton of cane to convert it into sugar.

Mr. HUSTED. And you have no knowledge of the cost of sugar per ton?

Mr. MILLING. No, nothing except—we do not figure it that way. None of our reports are made up that way. The Tariff Commission may have figured it that way; I do not know about that. I have not noticed the Tariff Commission's report.

Mr. HUSTED. Then you do not know how the cost of the average ton of sugar of the 1920 crop in Louisiana compared with the cost of the average ton of sugar of the 1919 crop or the 1918 crop or any preceding crop?

Mr. MILLING. The actual cost of a ton of sugar, if you take into consideration the cost of the cane from which it was produced, plus the cost of manufacturing, was very much greater in 1919—you call it the 1920 crop; I call it the 1919-20 crop.

Mr. HUSTED. I think that is more correct, and the only reason I refer to it as the 1920 crop is because all of the witnesses who have testified to it here have referred to it as the 1920 crop.

Mr. MILLING. They get into that because Cuban sugars are produced after the first of the year and they would call this last year's crop the 1920 crop; whereas we started with it in November and got

through with it before Christmas, while they run over into this year and therefore call it the 1919-20 crop, you see.

Mr. HUSTED. Now will you tell us, if you have the information, how the manufacturers of raw sugar regulate their charges where a toll plan is in operation? In other words is there any fixed basis for that charge?

Mr. MILLING. No; there has been little or no—now are you speaking of sugar or cane?

Mr. HUSTED. Sugar.

Mr. MILLING. There have been no arrangements of that kind in Louisiana until this last year except in one or two instances. You understand that two or three planters converted their cane juice into what we call 96 degree sugar; that is a sugar that is not fit for direct consumption except in certain manufactures. It is good in some manufactures; but it is not a sugar for general consumption. Now, those who had that kind of a factory made some arrangement some years ago by which they sent 100 pounds of raw sugar to a factory and that factory would turn them back so many pounds of granulated sugar, somewhere around 90, 91, or 92 pounds, is my recollection, when the margin between raw and refined for refining was less than 1 cent a pound.

Mr. HUSTED. Of course I do not know anything about sugar and I am seeking information.

Mr. MILLING. I could go a little further in that connection. Since the first of the year, since the Louisiana sugar producers have been met with the great shortage of sugar in the United States, a number of them have purchased sugar themselves in Cuba or they have taken sugar and refined it or washed it up, as you call it, made it good for direct consumption, on toll. Now that consists of two processes. In one, you can take the sugar, wash it up and run it through a granulator and it is practically the same sugar as the plantation granulated sugar that we make direct from the juices, don't you see. Or you can wash it up and not run it through the granulator and it has every appearance of the plantation clarified sugars, you see.

Mr. HUSTED. Now if you will give me this information: I am going to assume that I own a plantation in Louisiana and I am a sugar cane grower; I have not got any factory for grinding my cane and I have not got any means of making sugar—the manufactured product. Now I want to find out who much it would cost me if I were a grower alone, living in Louisiana and during this past year—how much it would cost me to get my cane converted into manufactured sugar?

Mr. MILLING. It would have cost you the value of 100 pounds of plantation clarified sugars, the price that was worth on the New Orleans market. That is the basis on which they dispose of their cane. In other words, instead of actually giving him, weighing out the 100 pounds of sugar, he gives him the equivalent of that which would be this last year, \$17. And a great many of them had contracts by which they gave bonuses, the manufacturers did, the factories, by which they gave bonuses of 25, 30, or 40 cents for each additional cent over a certain amount and would pay the freight on that and allow a hoisting charge, some of them did, also. So that they would get \$17 plus. That is what they would get.

Mr. HUSTED. That is per ton?

Mr. MILLING. That is per ton of cane; not sugar now; per ton of cane.

Mr. HUSTED. It would cost, then, \$17?

Mr. MILLING. Cost the factory. It would cost the factory \$17 plus whatever bonuses they paid, plus the freight.

Mr. HUSTED. That is what the factory would have to pay?

Mr. MILLING. That is what the factory would have to pay.

Mr. HUSTED. To the man who grew the cane?

Mr. MILLING. To the man who grew the cane.

Mr. HUSTED. He would have to pay him \$17 for a ton of—

Mr. MILLING. Of cane.

Mr. HUSTED. Of cane.

Mr. MILLING. Plus whatever bonuses he paid, plus the freight.

Mr. HUSTED. What do you mean by a ton of cane? You do not mean the stalks of sugar cane as they were brought to the factory?

Mr. MILLING. Yes, I do; that is exactly what I mean.

Mr. HUSTED. In the raw, cut state?

Mr. MILLING. In the cut state, yes, sir. And if the clarified sugar is 25 cents a pound, he would have to pay \$25 a ton plus, to the grower of that cane.

Mr. HUSTED. How much on the average in the year 1920 did it cost to convert sugar cane, for which \$17 a ton was paid, into manufactured raw sugar?

Mr. MILLING. Well, as I started to explain a while ago when my answer to that question was based upon cane and not upon the raw sugar, it cost anywhere from a minimum of \$1.60 to \$1.75, the actual cost of manufacturing, not including the overhead, you understand—if you were to put the overhead at \$1, I would say it would be \$2.75 a ton as a minimum—up to anywhere between \$5 and \$7 and maybe more; I do not know. It is owing entirely to the factory that you used and there are some that are old fashioned.

Mr. HUSTED. From how much up to \$5?

Mr. MILLING. From a minimum of \$2.75.

Mr. HUSTED. A ton of sugar?

Mr. MILLING. No; a ton of cane.

Mr. HUSTED. How much sugar does a ton of cane produce on the average?

Mr. MILLING. Well, on the Mississippi River and on the Lafourche, in that section, that produces usually about 125 to 130 pounds of clarified sugar in a good year and on the Teche about 140 to 150 pounds. This last year it was an exceptionally low yield and the first of the season the manufacturers complained—I have never looked at the figures, but they complained that they did not get enough out of the cane during the first part of the grinding to pay the cost of the cane.

Mr. HUSTED. I understood you to say you had some interest in a factory?

Mr. MILLING. Yes.

Mr. HUSTED. Which buys cane?

Mr. MILLING. Yes.

Mr. HUSTED. And converts it into manufactured sugar?

Mr. MILLING. Yes; and grows a great deal of cane.

Mr. HUSTED. You say the output of that factory is about 1,000—

Mr. MILLING. They will grind a thousand tons of cane a day.

Mr. HUSTED. They will grind a thousand tons of cane a day?

Mr. MILLING. Yes—from 900 to 1,100.

Mr. HUSTED. How much, as a matter of fact, did your factory grind during this past year, of the 1919-20 crop?

Mr. MILLING. We did not grind any.

Mr. HUSTED. You did not grind any?

Mr. MILLING. No. We had a crop—

Mr. HUSTED. Then you have no figures at all?

Mr. MILLING. Well, yes; I have some figures.

Mr. HUSTED. That is on your own factory?

Mr. MILLING. I was going to explain; we shipped what little cane we made to a neighbor, who manufactured it for us practically at cost in order to keep his factory running, don't you see, all the time, to avoid the necessity of a shut down.

Mr. HUSTED. How much did he charge you for manufacturing the sugar from your cane?

Mr. MILLING. He charged us two dollars and sixty-odd cents, is my recollection. Two dollars and sixty-odd cents, not of sugar now—per ton of cane.

Mr. HUSTED. I understand. He charged you two dollars and sixty-odd cents for manufacturing how many pounds of sugar from your ton of cane?

Mr. MILLING. I do not remember just now. The sugar yield was not very high, though, this last year. On that plantation—

Mr. HUSTED. Do you not know what the sugar yield of your own cane was?

Mr. MILLING. No; I do not remember just how much per ton we got out of it.

Mr. HUSTED. Can not you give us any idea?

Mr. MILLING. It is around 125 to 135 pounds, I suppose, last year.

Mr. HUSTED. 125 to 135 pounds?

Mr. MILLING. Yes.

Mr. HUSTED. That cost you two dollars and sixty-odd cents for the manufacturing?

Mr. MILLING. Yes.

Mr. HUSTED. How much did the cane cost you?

Mr. MILLING. The cane cost us about \$21,000 more than it was worth at \$17 a ton; in other words, let me explain, on the plantation—

Mr. HUSTED. If you will tell us—you say \$21,000 more than it was worth; of course that does not mean very much to us.

Mr. MILLING. That is the reason I want to explain to you. You see, we have a plantation there that, in 1918, we harvested 37,000 tons of cane off of. And I suppose there are 3,000 tons we lost there in the way of bad weather, shrinkage, and so forth. It really should have been a 40,000-ton crop. This last year we got eight thousand and a fraction tons of cane—eight thousand seven hundred and something, I think. In other words, that is the number of tons of cane we got off of the plantation. Now, we had some neighbors who lived right close to the factory, and we agreed to grind their cane. That, put in with the rest, made over 10,000 tons. Crediting the plantation with \$17 a ton for the cane, just the same as though we had sold it by the

ton, we lost \$21,000 on the plantation and made about \$20,000 on the manufacturing concern. So, there was a small loss of a few thousand dollars.

Mr. HUSTED. What I would like to have you tell us, if you can, is what your cane cost you per ton to produce on your plantation?

Mr. MILLING. I think I have a statement; I do not know. No; I have not that analyzed, Mr. Chairman.

Mr. HUSTED. When you speak of loss, you speak not of actual loss, but you speak of loss as the difference between what your plantation would have done under a full crop and what it actually did under the conditions prevailing in 1919. Am I correct about that?

Mr. MILLING. You are not correct. I mean by a loss actual money we would have lost if we had been forced to sell that cane by the ton instead of making some arrangement by which we could have it manufactured. In other words, on that plantation, if we had sold cane at \$17 per ton, we would have lost \$21,162.25.

Mr. HUSTED. Do you mean that would be an actual cash loss?

Mr. MILLING. Why, certainly.

Mr. HUSTED. Or only the difference between what you actually made and what you should have made if you had had a full crop?

Mr. MILLING. No; I mean it would have been an actual cash loss.

Mr. SUMNERS. Let him continue to tell what it cost and what he got.

Mr. HUSTED. I want him to give, if he can, his cost figures for his plantation.

Mr. MILLING. I have not got it per ton.

Mr. HUSTED. I would like to have the costs of tillage, and the cost of planting and of cultivating the crop, and harvesting and cutting, and the cost to deliver to the factory.

Mr. MILLING. There is a gentleman here who will give you that more in detail. For that crop, we spent that year around \$234,000. That is about what went into the crop. Those figures are rough. Of course, I could get the books and I could give you all the information, but the only thing I have here is just the balance sheet showing the outcome.

Mr. HUSTED. I thought you came here prepared to give us accurate figures as to costs?

Mr. MILLING. Some of the other gentlemen have, but I did not. In fact, I did not even know I would be asked to testify to this, and if I had made a statement I should not have said anything about what we paid or made or anything about it. I should have just gone on and made a general statement about other things.

Mr. HUSTED. You figure in your plantation what percentage of a normal yield for the year 1919?

Mr. MILLING. As I have stated already, the year before we made 37,000 tons of cane, harvested that much. We really had a 40,000-ton crop. This last year we made 8,000 and a fraction tons on the place proper.

Mr. HUSTED. Then am I correct in assuming that in 1918 you actually harvested 37,000 tons and in 1919 you only harvested 8,000 tons?

Mr. MILLING. No; we harvested thirty-seven and a fraction in 1918, and eight thousand seven hundred and something, is my recollection, in 1919.

Mr. HUSTED. There were many plantations that were not as seriously affected as that, were there not?

Mr. MILLING. There were plantations that were not seriously affected; a number of them were.

Mr. HUSTED. Were you more seriously affected than the average plantation?

Mr. MILLING. I do not think so.

Mr. HUSTED. Would you say yours was fairly an average?

Mr. MILLING. I could not say about that. I have not analyzed those figures. I know of other gentlemen on other plantations who did not come out any better than we did, from their talk, you understand.

Mr. HUSTED. In what parish is your plantation?

Mr. MILLING. St. Mary.

Mr. HUSTED. I notice from the hearings before the Judiciary Committee, this committee, the Department of Agriculture gives the condition of parishes as follows: St. Mary, 42 per cent.

Mr. MILLING. Yes.

Mr. HUSTED. Of a normal crop. That is just about what your figures show.

Mr. MILLING. Let us see; eight forties would be how much?

Mr. SUMNERS. Less than 20 per cent.

Mr. MILLING. That is about what ours was. I should think the Parish of St. Mary is about one-third. But in determining the amount of sugar produced in St. Mary, you would also take into account the cane that was shipped in there from other parishes. St. Mary has several large factories, you see. There is the parish of Lafayette, for instance, and a great deal of cane is shipped into the parish of St. Mary, and there is Vermilion and other parishes.

Mr. HUSTED. These figures relate only to the condition of the crop.

Mr. MILLING. I understand.

Mr. HUSTED. Now the Department of Agriculture gives the parish of St. Mary as 42 per cent affected.

Mr. MILLING. Yes. What report was that; how late, do you know?

Mr. HUSTED. That is quite a recent report; December estimate.

Mr. MILLING. His estimate was high.

Mr. HUSTED. December estimate of the Agricultural Department of the crop in Louisiana.

Mr. MILLING. His report before that was even higher. He kept lowering his estimates all the time, and so did we. For example, just before we went into grinding and actually cutting cane on this place, we expected to get 18,000 tons—18 to 20. Then we cut some cane for seed and planted it and we saw our estimate was high and we dropped to 15,000. And when we went into cutting the cane it turned out so poorly we dropped to 12 and then to 10 and the actual out-turn was eight thousand and odd tons. Nobody knew how short the crop was until it was actually harvested.

Mr. HUSTED. Yes. Well, as you understand it, how much did you actually lose on the manufactured product—actual net loss on all the operations?

Mr. MILLING. During 1919?

Mr. HUSTED. Yes; of this plant of yours in which you are interested.

Mr. MILLING. I can give it to you in a second. \$3,018.87. That was the balance sheet of December 31.

Mr. HUSTED. According to those figures, if your plantation is 80 per cent affected injuriously; in other words, if you only had a 20 per cent crop and made a loss on the whole operation of only about \$3,000, that would show pretty large profits, would it not, for a plantation that was only 80 per cent affected, for example, and had 20 per cent of a normal crop?

Mr. MILLING. I do not know about that. We were very thankful we got out as well as we did on the crop. Of course we have good management and we try to make money. That is the very purpose of running the plantation.

Mr. HUSTED. Certainly; of course.

Mr. MILLING. We are not running as an eleemosynary institution or anything of that kind, you know; we expect to profit.

Mr. HUSTED. I would not have much respect for your business your business judgment if you did not.

Mr. MILLING. Certainly not.

Mr. HUSTED. Your plantation was very badly affected; that is apparent?

Mr. MILLING. Yes.

Mr. HUSTED. It was not a typical case?

Mr. MILLING. No; I think there are some of them even worse than ours was.

Mr. HUSTED. I do not doubt there were.

Mr. MILLING. Yes.

Mr. HUSTED. But you were affected much worse than the average plantation?

Mr. MILLING. I am unable to state that; I am unable to say that. I think there were some plantations that made very much better crops than we did—a few. There was some little section that did not have as much rain as other sections and it was a more seasonal section, in other words, and they made better crops.

Mr. HUSTED. Let us estimate it by the total value of the crop, for example, in 1919 and 1920.

Mr. MILLING. Yes.

Mr. HUSTED. Or the total tonnage in 1919 or 1920. In 1919, how many tons of sugar were produced in Louisiana?

Mr. MILLING. I think about 230,000 tons. Mr. Chaffe, have you the exact figures?

Mr. CHAFFE. 280,000 tons.

Mr. MILLING. 280,000 tons practically.

Mr. HUSTED. And in 1920, how many tons?

Mr. MILLING. About 121,000.

Mr. HUSTED. That is what percentage of the yield of 1919—something over 40 per cent?

Mr. MILLING. Yes; about 40 per cent, I should think.

Mr. HUSTED. About 40 per cent.

Mr. HUSTED. So it is fair to assume from that, then, that the average plantation in Louisiana was only 40 per cent affected?

Mr. MILLING. That is the average. I do not say it is the average plantation.

Mr. HUSTED. The average?

Mr. MILLING. Yes.

Mr. HUSTED. For some plantations, though, it was larger than others; but speaking generally, that would indicate that the average

plantation was only 40 per cent affected whereas your plantation—I am wrong. The average plantation was 60 per cent affected.

Mr. MILLING. Sixty per cent affected.

Mr. HUSTED. Whereas your plantation was about 80 per cent affected. Now, let us do a little figuring along that line. Your plantation 80 per cent affected, showed a net loss of about \$3,000?

Mr. MILLING. Seventy-five per cent affected, possibly, or 66½ per cent. We got 8,000 tons of cane as against 37,000 tons the year before. That is about the proportion—25 or 30 per cent of a crop—that is, of the crop of the year before.

Mr. HUSTED. Now, if your plantation had only been 60 per cent affected, what would your gain have been?

Mr. MILLING. What is that?

Mr. HUSTED. Assuming your plantation, instead of being 80 per cent injuriously affected by weather conditions, and so forth, had been no worse affected than the average plantation, say, 60 per cent affected, how much would your plantation have gained? What would have been your net gain? The other figures remaining constant, what would your gain have been as against your loss of \$3,000?

Mr. MILLING. I would have to figure that out.

Mr. HUSTED. Can you figure it out?

Mr. MILLING. Yes, I can; but what is the necessity for it?

Mr. HUSTED. It would be quite illuminating.

Mr. MILLING. Let one of these other gentlemen do it.

Mr. HUSTED. It would be quite illuminating. You are coming here to give us information.

Mr. BOISE. Would it not be about \$12,000?

Mr. MILLING. Perhaps so. I am not very good, though, on figures in my head, and we have some gentlemen here who would be pleased to answer your questions. They love it and I do not. I do not like to try to figure on it.

Mr. HUSTED. I think that is all.

Mr. SUMNERS. I want to ask you just one or two questions: How much is your plant worth; what is it supposed to be worth under ordinary conditions?

Mr. MILLING. You mean what I could turn to and sell it for, or reproduce it, or what?

Mr. SUMNERS. What I am trying to get at is this: I suppose in estimating the fair profit, of course, you figure in what your profit ought to be, some interest on your investment?

Mr. MILLING. Certainly.

Mr. SUMNERS. And some costs about it?

Mr. MILLING. Yes.

Mr. SUMNERS. What would be your interest on your investment?

Mr. MILLING. The capital stock and surplus, I think, is six hundred and odd thousand dollars.

Mr. SUMNERS. Does that represent the value of your plant as well?

Mr. MILLING. No; it does not.

Mr. SUMNERS. If I am asking you any questions upon which you feel any delicacy about answering—

Mr. MILLING. No; it does not.

Mr. SUMNERS. Without going into details, what is your plant worth?

Mr. MILLING. The land itself is worth \$500,000 and the sugar house you could not replace for \$500,000 to save your life.

Mr. SUMNERS. That is something like \$1,000,000?

Mr. MILLING. It is a million and a quarter, easily.

Mr. SUMNERS. In the figures you have given here, you have not taken into consideration any interest on your plant or your investment?

Mr. MILLING. No; certainly not.

Mr. SUMNERS. What is the cost of maintenance, the upkeep or the deterioration—whichever way you want to figure it?

Mr. MILLING. I think we charged off about \$56,000 last year.

Mr. SUMNERS. Now, then, as a matter of fact, you failed to make anything; you failed to make any upkeep and failed to make any interest?

Mr. MILLING. No; we made the upkeep, is my recollection. That comes in in every statement.

Mr. SUMNERS. The upkeep is in, but you have not any interest on the investment?

Mr. MILLING. Yes; the upkeep.

Mr. SUMNERS. Then, the deterioration: Have you figured that into those figures where you just say you lost?

Mr. MILLING. Yes. We lost \$3,000 and made nothing on the investment. That is the situation.

Mr. SUMNERS. I want to get it absolutely clear. As a matter of fact, then, if you had not charged anything against upkeep, you would have made about \$53,000?

Mr. MILLING. Yes.

Mr. SUMNERS. I just wanted to get those figures.

Mr. MILLING. Gentlemen, I think I could give you some information on this resolution by making a statement as to the conditions that existed in Louisiana at the time that you want the information relative to—

Mr. SUMNERS. I want to ask you, Judge, if you will pardon me: I believe you stated you were in the conference up here?

Mr. MILLING. Yes.

Mr. SUMNERS. And in the conference with the District Attorney of your district?

Mr. MILLING. I was.

Mr. SUMNERS. I would be glad if you will tell the committee, as briefly as you can—you have heard most of the testimony and you are a lawyer—with reference to the points the committee wishes to know.

Mr. MILLING. At the conference here, we conferred with Mr. Zabriskie and Mr. Glasgow.

Mr. SUMNERS. Give some dates as near as you can.

Mr. MILLING. It was right after Mr. Zabriskie went on the stand, perhaps October 20, 21, or 22; somewhere along there. We had a conference in Senator Ransdell's office, and it was a conference for the purpose of trying to arrive at some just settlement of the situation, if we could, and the matter of how it could be adjusted, or whether they would buy the Louisiana crop or whether they would guarantee us a certain price, etc., was discussed. And Mr. Zabriskie was not disposed to undertake that unless he had legislation, is my recollection.

While we were here, we noticed that the Attorney General had notified the beet people they could not sell above 10 or 10½ cents, so we all went up there and I was the spokesman there and I informed

the Attorney General we absolutely could not sell at any such price in Louisiana without going into bankruptcy; that I did not believe, under his act that had just been passed a short while before and, my recollection is, approved by the President on the 22d, or perhaps it had been approved the day after it was passed—I do not remember—I did not believe under that act we were forced to sell at a loss, and we were entitled, if the market conditions were such as to justify it, to get a price that would at least bring us out whole and that we could not come out on a price of that kind. He wanted to know on what price we could come out and I told him the conditions; that it was an expensive crop, that it had cost more per acre to cultivate it than it had the year before; that we would make a half crop, as we thought then, about a half crop or a little less than half a crop, and we would have to have around double what we got the year before if we came out whole. That was the discussion we had before him and I told him "We will risk prosecution, we will risk anything else you want to do to us, but we do not propose to sell our sugar at 9 and 10 cents a pound if we can get a better price."

Ending the discussion in Senator Ransdell's office, we sent a wire home for the purpose of calling every man engaged in the sugar industry, not only the Cane Growers' Association, but all the planters and cane growers who were outside the association, to meet in the city of New Orleans at a certain time; that we wanted to discuss the situation with them. We met there and they were very hostile to any idea of the Government having anything at all to do with the fixing of the price or agreeing upon a price. They asserted, "Sugar is selling at 20 and 22 cents a pound here in the open market; we have a short crop and we are entitled to get every dollar out of it we can." Now that was their attitude.

Mr. HUSTED. Of course you realize that attitude was not correct under the Lever Act?

Mr. MILLING. I do not agree with you as to the effect of the Lever Act. I think those gentlemen had a perfect right to sell their cane at any price they could get for it. They had contracts with the manufacturers by which they would receive a dollar a cent per ton for each cent that yellow clarified sugar was worth on the New Orleans market. It was then selling at 20 and 20½ cents a pound, clarified. They said, "Under your contract with me and with my factory, you owe me \$20 a ton for my cane." That was the position of the cane growers, you see.

Now that was the condition in Louisiana. I talked with those gentlemen and I told them that "here is the situation: The Nation is stirred up over the high price of sugar; they think you are profiteering; they do not understand the fact you have not any crop; they think you are boosting the price and the Attorney General is not thoroughly familiar with the situation and he is going to insist upon his district attorneys arresting every one of us who sells sugar too high, and unless we can come to some agreement I tell you if they persist in arresting us every day during the year here, we can not manufacture the crop; it will upset the situation to such an extent that we won't be able to get in a crop and we won't come out as well as if we could agree with the Government on some basis. That is my judgment." I stated, "As far as the Lever Act is concerned, I do not believe they can convict anybody under it, because under the

terms of the Constitution of the United States and of every State constitution, a man has a right to know what the law is in order to determine whether or not he is violating it, and this thing of a general criminal statute— whoever heard of such a thing. The very idea of arraigning a man under a criminal statute where the statute does not define the crime, why you could not convict anybody under that act, I do not think." That is what we felt in that regard when we were discussing the question. But I said, "As far as that is concerned, we don't want to be prosecuted; we want to try to agree, if possible."

Now that was the situation of the Attorney General and ourselves at the time, and we felt we were making an enormous concession to drop down 3 cents a pound on a sugar crop that looked like it would spell disaster at most any price we could get for it. And it was only for the purpose of conforming to the views of the Government, without raising any contest as to their act and as to their power, and for the purpose of amicably adjusting the whole situation in order that the public might get that sugar, that we agreed to that price.

By the month of November, there was such a shortage of sugar there that you could have sold at any price. Now, when the maximum price at which we agreed to sell, at 17 cents, was fixed, we did not know we would get 17 cents throughout the season. In fact, if the crop had been a normal crop of 250,000 or 300,000 tons, we would not have gotten out because there would have been a great deal more sugar on the market. It is usually the case there is a great deal of sugar on the market in December and the price usually declines. But we felt that we could not afford to have a fight here with the United States Government and we could not afford to be held up to the world as profiteers. That is just the position we assumed. And, assuming that position, the cane growers said "We will take our part of the loss; we will agree on the price of \$17 a ton for the cane, plus what ever bonuses have been agreed to, and that will be a price on the clarified sugars. If you will think about it a minute, it is almost impossible to work out any profiteering scheme against the Louisiana sugar manufacturer. From time immemorial, before the war, we bought cane on exactly the same basis that we do to-day. Now the cane man who produces the cane is especially exempted from the effect of the Lever act.

Mr. HUSTED. If you will pardon me, I do not want to cut you off, but I do not know that you are testifying to anything material under this resolution and there are some other gentlemen here from Louisiana who want to get away and to get back to the State, so that we must not go on too long. Of course, you understand, I suppose, that this Lever act was drawn by the Attorney General.

Mr. MILLING. I did not know who drew it. I understood him to say here the other day he did.

Mr. HUSTED. And his construction, you understand, is different from yours?

Mr. MILLING. Most lawyers differ, you know.

Mr. HUSTED. I would like to know something about this negotiation which was had between the sugar men of Louisiana and the sugar equalization board, looking to the sale of the entire crop at from 14 to 15 cents a pound.

Mr. MILLING. If you will just pardon me a little bit, I am practically through with what I wanted to say owing to the conditions

that confronted them in Louisiana; because if I understand it, the first proposition here in your resolution is:

First. To the admitted concurrence of the Attorney General in a maximum, agreed, or fixed price of 17 cents for Louisiana clarified sugar at the plantation and of 18 cents for Louisiana clear granulated sugar at the plantation made in a telegram dated November 8 last to the United States attorney at New Orleans, La., or otherwise.

Now it seems to me the very first thing we would be justified in showing this committee would be to show the conditions that existed in Louisiana at the time that the Attorney General and district attorney appeared there and discussed these questions with us. Now, as I say, those conditions were such that we were getting twenty-odd cents a pound for our sugars and, by discussing the matter with them and with the cane growers and producers, we agreed on a 17-cent price—that is, 17 cents maximum. Now my judgment is, nobody in Louisiana could have been convicted on a 20-cent price because, as I say, he would have shown the cane cost him \$20 a ton plus, and that that was the prewar price he had always paid for cane and he had always taken that manufacturing price between the price of a dollar and a cent as we call it, and what he got out of the cane; that he would have taken no more profit now than he took before the war, and wherein could he be profiteering? That is the way we looked at it. If it had been 25 cents, he would have paid that, and as the market went up, he would have continued to pay higher for his cane.

Take the manufacturer who is also a producer: To the extent of producing cane, he is a cane producer and he is exempt from the Lever Act. Therefore he had a right, when he delivered cane to his own factory, to credit his plantation with exactly the same price he paid other people for cane. And if the price went up to 25 cents a pound, he had a right to credit his plantation with that and then to add his manufacturing cost. And I do not see how you can hardly charge anybody there with profiteering if he took 30 cents a pound. That is the way we construed it. And with all these lights before us, we agreed, to help out the situation, to take the 17 cents. Now, that being the case, and certainly the district attorney ought to have known he could not convict anybody, it seems to me he was very hard in forcing us down to 17 cents when the market was 20 cents. That is the way we looked at it. We may have looked at it with a selfish view; I suppose we did.

Mr. HUSTED. I understand your position perfectly.

Mr. MILLING. Yes.

Mr. HUSTED. But under the Lever Act, it was the duty of the Attorney General to prosecute anybody who sold for more than a fair and reasonable price.

Mr. MILLING. Yes.

Mr. HUSTED. A fair and reasonable price as the Attorney General himself has admitted, under the terms of the Lever Act, is based solely upon a fair and reasonable profit upon the actual cost of production. And it has not anything whatever to do with the market price, for there may be peculiar conditions.

Mr. HUSTED. There may be peculiar conditions, a shortage of the crop and that sort of thing and a great demand, which run your prices away up out of all relation to the cost of production.

Mr. MILLING. But you have to start, though, at a basis somewhere to determine what is the reasonable profit. For instance, take——

Mr. HUSTED. You have to start with your cost of production first.

Mr. MILLING. All right. Now, suppose——

Mr. HUSTED. Then, on that you allow a reasonable profit. Now, the Attorney General assumes to fix that himself, and to that extent he took the law into his own hands and assumed to fix what was a fair and reasonable profit.

Mr. MILLING. Suppose that you took the case of the grower of wheat; suppose that the price of wheat went to \$5 a bushel, and then you said that the man who manufactured that into flour and sold it above the cost of the wheat plus the cost of manufacturing and plus a reasonable profit was profiteering. Could you say that?

Mr. HUSTED. I would say under the Lever Act anybody who sold for more than a fair and reasonable profit on cost of production, or what he actually paid for the article, would be a profiteer. I would not say your situation was any different whatever from the situation of the beet-sugar people. The beet-sugar people's situation was just the same.

Mr. MILLING. No; it was not.

Mr. HUSTED. Oh, well, in respect——

Mr. MILLING. Excuse me; I did not mean to answer you that way.

Mr. HUSTED. In the respect in which I mean, I think it was exactly the same, because there you have farmers that raised sugar beets. The farmers raise those beets and the farmers have to send them to the factory to be manufactured into sugar, just exactly the same as you send your cane, and the farmer who grows the beet is just exactly as much exempted from the provisions of the Lever Act, as an agriculturist, as a man who actually grows the cane in Louisiana; and in the case of the sugar-beet farmer and the sugar producer from sugar beets in the Northwest, the Attorney General says, "You can not sell for more than 10 cents per pound. You can not sell for more than 10 cents per pound, and if you sell for more than that, I will prosecute you."

Mr. MILLING. Will you let me answer that?

Mr. HUSTED. When I get through. "And if you charge any more than that I will prosecute you, and I want you to let me know right away whether you are going to abide by that price or not."

Mr. MILLING. Yes.

Mr. HUSTED. He did not take it up with them as he took it up with you, to come to a reasonable, amicable adjustment which was going to be satisfactory to you and satisfactory to him; but he went to the best sources available on the cost of producing the beet sugar, the Sugar Equalization Board, and he said to them, "What is a fair and reasonable price at which beet sugar should be sold," and they told him, and he sent out a notice.

Now, in your case down there in Louisiana, he did not treat you in the same way at all. He went down there, through his district attorney, and you discussed the question and you presented your case, and as you expressed it, and as he expressed it, you came to a sort of amicable arrangement about it.

And I want to know if there is any reason why people down there should be treated any differently from the beet sugar people up in the Northwest?

Mr. MILLING. Yes, sir, I think so, Mr. Chairman; and I will tell you why. With reference to the beet grower in 1918, there was a delegation of beet growers that came to this city and appeared before the Food Administration and declared that they would quit growing beets unless they got a better price for them. Mr. Rowland, of the Food Administration, told the beet manufacturers to agree with the beet people to pay them flat \$10 a ton, which they agreed to do, and it was my understanding, though I may be mistaken, as to this 1919 crop, that it went over for the 1919 crop; and the Sugar Equalization Board was well aware of the fact that most of the beet sugar in the West was produced from beets that sold at \$10 a ton. That was the contract that they had with them. And 10 cents a pound for sugar, from beets at \$10 a ton, is a great deal better contract than 17-cent sugar from Louisiana cane at \$17 a ton. The reason I say that is, because the sugar yield per ton of beets is greater than the sugar yield per ton of cane.

Mr. HUSTED. You say the sugar yield per ton of beets is greater than the sugar yield per ton of cane?

Mr. MILLING. Very much greater; in one county in California they get as much as 350 pounds of sugar per ton of beets.

Mr. HUSTED. Well, the greatest sugar expert in the country told me the reverse of that; he said that the yield of sugar per ton of cane was greater than the yield of sugar per ton of beets.

Mr. MILLING. Oh, no; and if the beet sugar people of the West just had a little encouragement from Congress they could produce more sugar than you could use in the country, because there are 350,000,000 acres of land out there that will produce magnificent beets; and if that encouragement of that industry had gone on for some years back, instead of constantly trying to break down the sugar industry in the United States, we would have had plenty of sugar in the United States to-day, and we would have been getting it at reasonable prices.

Mr. SUMNERS. Mr. Chairman, I want to suggest to all parties, if you and the members of the committee will allow me to do so, that we are covering too broad a field in this discussion.

Mr. MILLING. Yes; there is no doubt about that.

Now, Mr. Chairman, I will be glad to answer your question about what occurred here. What was the question?

Mr. HUSTED. Well, I would like you to tell what you know about the negotiations pending between the Sugar Equalization Board and the producers of sugar in Louisiana for the purchase of the crop, the entire crop, at from 14 to 15 cents a pound?

Mr. MILLING. As I stated a while ago, we had a conference in Senator Ransdell's office, and every fellow just talked out just like they were thinking aloud, in other words—and we were trying to work out some plan to save Louisiana from the disastrous situation—at least we were, and the Equalization Board and the Food Administration assumed that attitude all the way through, of trying to take care of the production of sugar in the United States in order to have as much produced as possible.

Now, Mr. Zabriskie and ourselves discussed the question of the Louisiana crop. His idea about it, however—first, however, we got that idea from a statement made by Judge Glasgow, in an investigation before Senator McNary's committee over there—that he thought by raising the price of the Cuban sugar in the East they

could raise a fund sufficient to absorb the loss to the Louisianians and buy their crop and sell sugar at a uniform price throughout the United States.

Well, we discussed it. Mr. Zabriskie, though, said his idea was that the best way would be, if they were authorized to do it, for them to absorb the Louisiana loss, and give them a fair profit, up to the extent of so many millions of dollars—whatever they could make out of the increased price in the East, if they decided to do that. We discussed that.

We also discussed the question of a purchase, and he thought that they might guarantee up to 14 cents. I notice that he stated in his evidence 15 cents, but he was mistaken about that; it was 14 cents.

Then some one suggested, "Well, what do you think the Louisiana crop could be bought at?" and I think Mr. Pharr stated, "Well, I do not know. We are not here with authority to sell the Louisiana crop. We would not attempt such a thing; but with the present lights before us it might be bought around 15 cents, though I could not say about that." And you understand that we made no proposition, and we made no offer.

Well, they thought something could be worked out along those lines. We did not know about it; and right there the committee sat down and sent a telegram and called the cane growers and sugar manufacturers of Louisiana to meet in conference. And when they met, we told them what had happened and the informal conferences that we had had; but there was not a man there that thought we could sell the crop at 15 cents, even if they could get 15 cents. But they did pass a resolution and send it to the Attorney General, which was read to you gentlemen here yesterday, to the effect that they desired to know if the Attorney General—if the United States wanted to buy the sugar, and if there was any organized authority that they could negotiate with for the purpose of attempting to sell the sugar crop. And he wired back, according to my recollection, that there was no such authority, and the only thing to do was to do the best we could down there—I do not know just exactly what. Then it was that we continued the conferences with the district attorney and ultimately agreed not to charge exceeding 17 and 18 cents.

But as far as all of this has gone in the papers about the Louisianians trying to sell their crop at 15 cents, there is nothing in it at all, except, just as I told you, as we might sit down here and informally discuss the thing. But nobody would have attempted to sell it; I would not have sold the crop for 20 cents a pound, or agreed to it, if the Government had offered that at that time, because we did not have the authority to do it.

Mr. SUMNERS. Well, was there any change in the conditions as to the Louisiana crop between the time you were discussing that with Mr. Zabriskie and the time you had your final conference with the doistrict attorney?

Mr. MILLING. Well, when this committee got back, we began to discuss the crop conditions. We found the crop conditions were much worse than we had anticipated. Mr. Pharr at that time was figuring on at least a 50 per cent crop, and when they got back home they did not think it would be over from 40 to 45 per cent, and the real outturn was worse than that. When we were here our belief as

to the crop was such that we would have made more money at 15 cents with that kind of a crop than we actually made at 17 cents with the kind of a crop which we did get.

Mr. HUSTED. I have no further questions.

Mr. MILLING. I am very much obliged to you gentlemen.

Mr. TINKHAM. Mr. Chairman, may I ask just one question?

Mr. HUSTED. Certainly.

Mr. TINKHAM. You said there were certain parts of Louisiana that were very much favored in relation to the crop yield. What parts of Louisiana were those, by parishes?

Mr. MILLING. Well, I understand that in a certain neighborhood in the parish of Avoyelles they had a very good crop. I did not go up there and see it; that was just the report that we had; I do not know the outturn. I understand also that one plantation in West Feliciana made a pretty fair crop; that was the penitentiary plantation; they had all the labor they needed, don't you see, and they had newer land, and a lot of conditions that made them a better crop.

Mr. TINKHAM. I would like to ask one more question, and that is this: You said that the Lever Act was unenforceable?

Mr. MILLING. Well, that was only an opinion of mine.

Mr. TINKHAM. You hold to that opinion that it was unenforceable, do you?

Mr. SUMNERS. I do not believe, Mr. Chairman, that we ought to go any further, if you will pardon me for suggesting it, into a discussion of the opinion of the witness as to the law.

Mr. MILLING. I stated that to the——

Mr. HUSTED (interposing). No, I think not.

Mr. SUMNERS. Let me ask just one question: I went up through Louisiana last fall, or some of it, and I noticed that a great many crops there had a little straggling cane growing up through the weeds. Was that planted that year and not cultivated?

Mr. MILLING. It was like the stubble cane that was not cultivated, for the reason that we did not have the labor.

Mr. SUMNERS. That is all.

Mr. HUSTED. Have you any witness here, Mr. Sumners, who can give us any actual figures on the cost of production?

Mr. SUMNERS. Yes, I believe so. Mr. Pharr is here.

Mr. MILLING. Mr. Pharr is to make a statement on the question of this 15-cent price, and then if you will call Mr. Dickinson and Mr. Chaffe they can give you some information.

Mr. HUSTED. Who is the man who can give us the best figures in the cost of production?

Mr. MILLING. Either Mr. Dickinson or Mr. Chaffe.

Mr. SUMNERS. Well, while we are on that question of the conference, Mr. Pharr can tell us about that.

Mr. HUSTED. All right; we will call Mr. Pharr.

STATEMENT OF MR. A. E. PHARR, OF MORGAN CITY, LA.

(The witness was duly sworn according to law by the chairman.)

Mr. PHARR. Mr. Chairman and gentlemen of the committee: I am very pleased to have the opportunity of appearing before you and correcting the misapprehension, with which Mr. Milling has already dealt in part, as regards a so-called offer of the Louisiana crop last fall to the Sugar Equalization Board at a 15-cent price.

Now, if you will permit me, I will read just a few paragraphs which will set us very clear on that question.

Mr. HUSTED. Well, if you will pardon me for interrupting, let me ask this: Will you tell me where the conference was held at which this 15-cent price was discussed?

Mr. PHARR. I will, Mr. Chairman.

Mr. HUSTED. Yes; if you will state that.

Mr. PHARR. That conference was held at Senator Ransdell's office, during October, and a day or two subsequent to our appearance before the committee known as the McNary Committee.

Mr. HUSTED. Do you remember the approximate date of that?

Mr. PHARR. I remember it was immediately after the 22d of October.

Mr. HUSTED. The last week in October?

Mr. PHARR. The last week in October, and——

Mr. HUSTED (interposing). Now, will you state who were present at that conference?

Mr. PHARR. Both Louisiana Senators, and Congressman Sanders, Congressman Martin, and perhaps one or two other Congressmen from Louisiana; Mr. Milling, and Mr. Dickinson——

Mr. HUSTED (interposing). Mr. who?

Mr. PHARR. Mr. Dickinson and myself. There probably were one or two or three others. Now, Mr. Chairman, I wish to say——

Mr. HUSTED (interposing). Now, all the men who were there from Louisiana were representative citizens of Louisiana, familiar with the sugar industry?

Mr. PHARR. I would certainly say that they were representative citizens, Mr. Chairman, but I would not go so far as to say that they were all thoroughly familiar with sugar.

Mr. HUSTED. Well, I mean the gentlemen who appeared from Louisiana; they were all thoroughly familiar with sugar, were they not?

Mr. PHARR. They were all quite familiar with sugar.

Mr. HUSTED. Those were the men, three of them, who are here to-day to testify?

Mr. PHARR. Yes.

Mr. HUSTED. And they were familiar with crop conditions?

Mr. PHARR. No; I think the evidence shows that no one was familiar with crop conditions, because at the time of our appearance here the United States Government, as well as these well-informed gentlemen from Louisiana, estimated that the crop was somewhere between 50 and 60 per cent; and I think the figures show, finally, that the outturn was about 40 per cent. And just in that connection I wish to say——

Mr. HUSTED (interposing). Well, these three men—I just want to ask this question now—these three men who were there present from Louisiana, were well qualified to represent the interests of Louisiana in a negotiation of this kind, were they not?

Mr. PHARR. They were not, sir; these three men were not qualified in any manner whatsoever to negotiate for the Louisiana crop.

Mr. HUSTED. Do you mean to say that they did not have the legal authority to act for those people?

Mr. PHARR. They had no authority whatsoever of any kind to negotiate for the Louisiana crop.

Mr. HUSTED. Well, were they well qualified from the standpoint of knowledge of conditions?

Mr. PHARR. The figures now at hand indicate that they were not, as I have tried to make clear to the committee.

Now, Mr. Chairman, I was about to state that, had the gentlemen known at the time the true state of the crop, they would never have discussed any figures less than 20 cents a pound for the sugar; and I wish further to state that, had the true status of the crop been known when the planters negotiated with Mr. Mooney, of the Department of Justice, they would never have considered any figure less than 20 cents a pound, which was the then average price of yellow clarified sugars on the New Orleans Exchange.

Mr. CLASSON. Let me ask you, Mr. Pharr, when you were here at Washington you though you knew conditions, did you not?

Mr. PHARR. We thought that we knew conditions, and we thought that the Government authorities thought that they knew conditions; but we know now—

Mr. CLASSON (interposing). Just a minute. You were here to negotiate under conditions which were somewhat different from what you thought they were?

Mr. PHARR. I have tried to make it quite clear, sir, that we were not here to negotiate; and if you will permit me, I will indicate what brought up the question of buying the Louisiana crop.

Mr. CLASSON. What were you here for?

Mr. PHARR. We were here to appear before the McNary committee.

Now, Mr. Chairman, if you will permit me, I will take much less of your time than I have already consumed, in giving you a very concise statement of facts, and a very excellent reason for this subject ever having come before you.

Mr. HUSTED. By the way, are you a producer yourself of sugar?

Mr. PHARR. I am, sir.

Mr. HUSTED. Do you own a plantation?

Mr. PHARR. I do, sir.

Mr. HUSTED. Do you own a factory?

Mr. PHARR. I do.

Mr. HUSTED. Do you refine sugar?

Mr. PHARR. I do not refine sugar, in the sense that the American Sugar Refining Co. refine sugar. I make a type of sugar called Plantation Granulated.

Mr. HUSTED. Are you a lawyer?

Mr. PHARR. I am not, thank you, Mr. Chairman.

Now, Mr. Chairman, just about six lines—

Mr. SUMNERS (interposing). Well, I want to insist that you be allowed to make your statement, if you want to—if you have a statement there.

Mr. PHARR. I have a very clear statement—thank you.

I now quote from the hearing before the subcommittee of the Committee on Agriculture and Forestry of the United States Senate, proceedings of October 18, 1919, page 98. Mr. Glasgow said:

I think that the United States Sugar Equalization Board can afford, by reversing the policy that it adopted last year, as far as the Louisiana producers are concerned, to buy the Louisiana crop, take its loss on the Louisiana crop, in order to have an equal price, based upon the Cuban purchase, rather than to have the whole Cuban price brought up to the basis of our own.

This statement was made before the McNary Committee a day or two before our arrival in Washington. And when we came upon the scene, we were confronted with this statement, and this idea, which was new to us, as we had had in mind, only one outcome of our crop—the privilege of selling it for the price that it would bring upon the market; knowing, as everyone knew, and as these gentlemen, eminently qualified to know, had stated that no price that we could get for it would be more than enough to bring us out whole, in their opinion.

Now, then, the second quotation is from the hearings before the Committee on the Judiciary, United States House of Representatives, April 13, 1920, page 106:

MR. ZABRISKIE. I felt at that time that the right attitude of the Attorney General was to notify Louisiana producers that profiteering would not be countenanced; that any man that profiteered in selling sugar would be prosecuted; and the reason we took this attitude was that the crop of Louisiana sugar had been practically offered to us at 15 cents—

And Mr. Glasgow injected just there:

MR. GLASGOW. Well, I do not quite agree with you on that.

And Mr. Zabriskie followed with the statement that probably he was in error.

Then Mr. Glasgow comes upon the stand, on April 13, in the same hearing, and corrects that misstatement of Mr. Zabriskie's, which Mr. Zabriskie had admitted was probably an error; and the correction is as follows:

There is one other thing, sir, if you will just let me say: After that suggestion as to the Sugar Board's buying or making some arrangement which was nebulous—it had not been worked out as to how it would be handled, the Louisiana crop and taking the loss on it, absorbing the loss, in order to keep the price down—we had a meeting Mr. Zabriskie and myself, at Senator Ransdell's office, with the representatives of Louisiana. The meeting at Senator Ransdell's office was to see whether we could not work out any basis upon which we would take the loss on the Louisiana crop.

MR. HUSTED. Whose statement are you reading from now?

MR. PHARR. Mr. Glasgow's.

MR. HUSTED. Well, we have all of that in the record.

MR. PHARR. I understand, Mr. Chairman.

MR. HUSTED. Why do you not tell us what occurred?

MR. PHARR. Mr. Chairman, I am almost through.

MR. SUMNERS. Well, will you not state that yourself? We have that in the record. And you are a perfectly credible witness.

MR. HUSTED. Yes, tell us what occurred; you see we have got that all in the record.

MR. SUMNERS. Yes, you should state that yourself, and not read what somebody else has said.

MR. PHARR. Well, I will just continue that statement, because my statement will so nearly parallel Mr. Glasgow's statement that I can scarcely deviate from it, nor could I state it better. He stated very clearly, following up what I have just read, that there was no offer made by the Louisiana people.

MR. HUSTED. Well, what was done?

MR. PHARR. And that they stated that they were not in a position to make an offer.

Now, the statement that I wish to make is that we especially stated that we were not there to trade; that we were not qualified to

trade; that we had come with no authority to trade; but since the question had been opened by Mr. Zabriskie a day or two before our arrival in Washington, before the McNary committee, that we would be glad to discuss any means of arriving at a fair basis of absorbing the loss which appeared to be inevitable on the Louisiana crop at that time.

Mr. HUSTED. What was said about 15 cents a pound? There must have been something said about it?

Mr. PHARR. There was a good deal said about it.

Mr. HUSTED. Now, if you will tell us that; you were there at the conference.

Mr. PHARR. I have indicated that we discussed a question of 15 cents, we discussed a question of 14 cents, and a question of 16 and 17 cents. We discussed the question of selling the Louisiana crop in toto to the Equalization Board, knowing that they were in a position, even without raising the other prices in New York and the West, to absorb the losses.

Mr. SUMNERS. Just tell us what was said, as near as you can, without arguing about the reasons, or what you knew. Now, here is what Mr. Zabriskie said; and then what you said, and now somebody else is talking. Now, can you give us an idea of what was said, as the chairman suggested—just give us the talk at that conference.

Mr. PHARR. We said this—laying stress upon the fact that we were not qualified to offer—

Mr. HUSTED (interposing). Yes, we understand that.

Mr. PHARR. And laying stress upon the fact that any price named would have to be referred to the Louisiana people, we discussed various and sundry prices, assuming at that time, that perhaps, 15 cents might be a figure which, multiplied by the estimated crop, would be somewhere near the equivalent of the previous year's 9 cents—for the crop of the previous year.

Mr. SUMNERS. Let us see if this is not about what happened: You had the judgment of yourself and associates, and the judgment of the Agricultural Department, as to the yield; you had that in your mind?

Mr. PHARR. Yes, we had that.

Mr. SUMNERS. Then, when you gentlemen were there in conference, it was suggested, and the suggestion was sufficiently important, that you had it in mind to submit it back to the Louisiana people that a price of 15 cents—

Mr. PHARR (interposing). No, we did not have it in mind to submit any particular price, until a firm offer should have been made by the Equalization Board. And that never was made.

Mr. SUMNERS. Well now, that is—

Mr. PHARR (interposing). Pardon me; let me finish. We only discussed this tentatively.

Mr. SUMNERS. I understand; everybody understands that on this committee. But this is about what I got from the whole testimony: That you gentlemen, with the lights before you, thought that there was a sufficient possibility of 15 cents being accepted, that that figure would sort of constitute a basis of a submission when you went back home to see what the folks thought about it?

Mr. PHARR. Yes.

Mr. SUMNERS. But when you got back home and got the reports, you found that you would have to have 17 cents from your crop in order to get as much as you had estimated that you would have gotten from the crop at 15 cents, if the conditions had been as you thought they were?

Mr. PHARR. Yes, sir. And it should be borne in mind that in the three weeks intervening—

Mr. SUMNERS (interposing). We understand.

Mr. PHARR. In the three weeks intervening, there was a daily shortening of the Louisiana crop.

Mr. HUSTED. Well, there was not three weeks between the date of that conference and the date the price was fixed.

Mr. PHARR. It was very close to it.

Mr. HUSTED. Well, the price was fixed on the 8th of November.

Mr. PHARR. Well, let us say two weeks.

Mr. HUSTED. And this conference was on the 22d of October.

Mr. PHARR. Well, it was close to that.

Mr. SUMNERS. Well, you had more information then than you had on the day you were up here with Mr. Zabriskie.

Mr. PHARR. Yes; and we had more information when the committee discussed it with Mr. Mooney, because at that time, a few plantations had made sugar and put it on the New Orleans Exchange, and it was bringing 20 cents. And in establishing that price of 17 cents, it is fair to the grower to say that he was just giving up \$3 a ton on every ton of cane that he raised, in a year when he raised very few tons; and he was by no means concerned with the Lever Act; he gave up that which might have been a profit.

Mr. SUMNERS. That is your view, of course. Now, we just want to get the facts. Were you in conference with the district attorney?

Mr. PHARR. I was not there.

Mr. SUMNERS. And you do not have any direct information about it?

Mr. PHARR. No; I was not there.

Mr. SUMNERS. Now, you stated that you were a producer. I do not know what your answer to this question will be. But how did your own output turn out?

Mr. PHARR. I should say we made about 3 per cent on our investment; and our investment is separated by about 40 miles, parts of it. I should say that we were not far from the average. I would say this, further, that, if we are looking for profiteers amongst the factory owners of Louisiana, we are going to be disappointed, because the total amount of moneys that they recovered from a ton of cane was somewhere close to \$22 or \$23.

Mr. SUMNERS. How did you come out on your plantation?

Mr. PHARR. Very skimpily.

Mr. SUMNERS. How much was it? Can you give any estimate?

Mr. PHARR. Well, I would be more nearly able to give you the figures that you want, perhaps, by telling you that the sum total of money recovered for a ton of cane was between \$22 and \$23. Now, \$17 of that went to the grower, whether he was the plantation owner, or whether he was a tenant, or whether he was an outsider owning his own land; and that left you with somewhere near a \$4 per ton cost, including transportation and factory operation; and when you add \$4 to \$17, and then take that amount from \$22 or \$23, you can see at

a glance that there was no possibility of a man who owned a factory from making even a fair profit, because his tonnage was, on the average, only 40 per cent of normal.

Mr. SUMNERS. What did your plantation yield?

Mr. PHARR. About 30 per cent.

Mr. SUMNERS. What had it been the year before?

Mr. PHARR. The plantation where I live had made 30,000 tons the previous year, and we made approximately 9,000 tons this year. In saying 30 per cent, you see, I am giving the nearest round figure.

Mr. SUMNERS. Well, anyhow, your statement to the committee is that, on your entire investment, taking in everything—without going into the details, because we can not follow the details—you made about 3 per cent on your investment?

Mr. PHARR. Yes, sir.

Mr. SUMNERS. That is, after charging your overhead and your shrinkage, and everything?

Mr. PHARR. When business men have made so little money, and made such a poor showing, it is almost humiliating to make the confession.

Mr. HUSTED. Will you kindly state if you can tell us what profits you made the previous year, on exactly the same cost figures?

Mr. PHARR. I can not; but I can say this very clearly, that it has been so long since the Louisiana producer of sugar has made any real money that you have to go pretty far back to find the year; it was prior to 1911. You see in 1911 we had a freeze; in 1912 we had a flood; in 1913 and 1914 we had the almost certainty of free sugar staring us in the face.

Then we had the war come on, and expected to have high prices, or moderately so; and Mr. Rolfe called us into court here and said, "We are going to get your cost sheets, and add to that a theoretical figure which will show you a theoretical profit of 8 per cent." That worked for two or three years; and I endeavored to make clear before the McNary committee that the figure that we received of 9 cents, less 2 per cent, of the year before, the past year, did not show any, thing like the profit that was figured as a legitimate profit, for the reason that we had a rainy season, extending our 80-day period, the normal period, over four months.

Mr. MILLING. Of grinding.

Mr. PHARR. Of grinding; and the cost of manufacturing that harvest, due to delay, due in turn, to incessant rains, brought down that profit to almost a negligible figure.

Mr. SUMNERS. Did he figure your 8 per cent profit on some estimate that was drawn from previous years?

Mr. PHARR. He figured on the cost sheets which were made up, in like manner as those were made for the beet-sugar people, and for Cuba, and for Porto Rico.

Mr. SUMNERS. Did you have any relationship to the sugar producers generally there—any official connection?

Mr. PHARR. Well, I simply belong to the organization, known as—

Mr. SUMNERS (interposing). You are just a member of the organization?

Mr. PHARR. I am only a member of the organization known as the "American Cane Growers' Association."

Mr. MILLING. And a member of the executive committee?

Mr. PHARR. And a member of the executive committee.

Mr. SUMNERS. I have no further questions.

Mr. PHARR. Now, Mr. Chairman, I would like to state that, when we appeared before the Attorney General last year, last fall, we disclosed these disquieting facts as regards production and inevitable losses; and we said that we wanted to be let alone, and we wanted to be allowed to have a free market; and that we had a right to it under the circumstances, and that we had made sufficient sacrifices. And as we left his room, he said, "Gentlemen, I can not give you any immunity bath."

Mr. HUSTED. Did you make as much in 1918 as you did in 1919?

Mr. PHARR. I beg your pardon?

Mr. HUSTED. Did you make as much money on your own plantation in 1918 as you did in 1919?

Mr. PHARR. Well, we made less money last year than the previous year. I will put it that way.

Mr. HUSTED. But you can not give us the figures on the previous year?

Mr. PHARR. No.

Mr. HUSTED. You say you made 3 per cent last year?

Mr. PHARR. About.

Mr. HUSTED. And you can not give us the exact figures?

Mr. PHARR. No; I do not know.

Mr. HUSTED. You can not give us the exact figures of the previous year?

Mr. PHARR. No; I know that it was more than 3 per cent.

Mr. HUSTED. But you could not say whether it was 4 per cent?

Mr. PHARR. I could not say just what it was.

Mr. HUSTED. That is all.

Mr. SUMNERS. That is all that I wanted to ask Mr. Pharr just now.

Mr. HUSTED. We will call Mr. Dickinson next.

STATEMENT OF MR. E. F. DICKINSON, MATTHEWS, LA.

(The witness was duly sworn according to law by Mr. Husted.)

Mr. HUSTED. Mr. Dickinson, are you a cane grower?

Mr. DICKINSON. Yes, sir; I am both a cane grower and a manufacturer of sugar.

Mr. HUSTED. And you own a factory and operate a factory?

Mr. DICKINSON. I do not. I am the manager of a factory.

Mr. HUSTED. You are manager of what factory?

Mr. DICKINSON. Of the factory owned by Mr. C. S. Matthews, of Matthews, La. I am also a part owner of a place in West Baton Rouge Parish, that also grows cane and makes sugar. We make what is known as "plantation granulated."

Mr. HUSTED. Do you make up the cost sheets for your factory?

Mr. DICKINSON. No; I do not; we have them made up, however, by a public auditor.

Mr. HUSTED. Are you familiar with the cost sheets of any factory for this year?

Mr. DICKINSON. In a general way, I am. I have not brought you any specific figures, however, that I can show you along those lines. Mr. Chaffe, who will follow me, is very fond of auditing, and he has it down pat and I am satisfied he will give you anything he has.

Mr. HUSTED. Now, is there any particular matter that you want to enlighten the committee about?

Mr. DICKINSON. Yes, sir.

Mr. HUSTED. What is that matter?

Mr. DICKINSON. Yes, sir; the particular matter that I want to enlighten the committee about is that I was asked to come before the McNary Committee last October.

Mr. HUSTED. What particular matter, now, do you want to enlighten us about?

Mr. DICKINSON. I want to enlighten you about the conference that was held in Senator Ransdell's room.

Mr. HUSTED. Well, we will be very glad to hear you on that.

Mr. DICKINSON. Well, I will be very glad to tell it to you, too.

Mr. CLASSON. Before you start, I want just to get this straightened out: These gentlemen that came from Louisiana up here, came for what purpose, originally? Was it for appearing before the McNary committee?

Mr. DICKINSON. For appearing before the McNary committee.

Mr. CLASSON. That was their sole purpose in coming here?

Mr. DICKINSON. Yes, sir; so far as I understood it; that was my sole purpose in coming here. And after appearing before the McNary committee, Mr. Glasgow was down there, and Mr. Zabriskie was there, and in a general way, after the hearing was over in that committee room, we discussed sugar matters, just like they were discussed in Senator Ransdell's room; and there were present Mr. Pharr and Mr. Milling and myself, and Mr. Le Bourgeois, and Mr. R. O. Young, the president of a sugar factory, and several other gentlemen; and the thing resulted in a general discussion about Louisiana sugar; and as Mr. Pharr told you, prices were discussed from 11 cents up to 17 cents. Mr. Zabriskie was very much in favor of 15 cents. I told Mr. Zabriskie that that did not have my approval at all; that I was not in favor of getting 15 cents for my crop; that I knew I was going to have a very short crop. Furthermore, nobody in the room had the power to sell the crop for 15 cents, or to offer it for 15 cents. As I said to Mr. Mooney, I felt like we were there more like messenger boys than for the purpose of holding conferences.

After discussing prices from 11 cents to 17 cents, Mr. Zabriskie brought up a scheme whereby the Louisiana sugar crop would be sold at 11 cents, and \$18,000,000 would be appropriated to make good up to 14 cents, and any man whose sugar cost him more than 14 cents would have to suffer; in other words, if our sugar cost us 14 cents a pound, and the equalization board made good up to 14 cents, and the cost of factory operation and transportation amounted to 4 cents, we would lose 4 cents a pound; and if any man made sugar which he bought at 18 cents, he would be a corresponding loser.

After discussing the matter, I told Mr. Zabriskie that that scheme would be both theoretical and fantastical, and that I would have nothing to do with it.

Mr. HUSTED. As a matter of fact, nobody ever made sugar in Louisiana at 20 cents, did they?

Mr. DICKINSON. You are quite right, and nobody ever made sugar under the conditions of last year either.

That conference broke up without reaching any conclusion whatever. Hoping that we could come to some conclusion about sugar,

we telegraphed to New Orleans calling a mass meeting of the sugar producers and cane growers, as Judge Milling has told you, in the desire to get somewhere so that we would not be under any indictment and so that we would not have any opprobrium thrown upon us. We discussed matters pro and con. Judge Milling was very anxious to come to some conclusion. And as I think he told you here—I think he said he was willing to throw himself into the breach and be prosecuted; but he was satisfied that he was about the only Louisiana producer that would want to stand in the breach, because they all were very much afraid of anything like an indictment by the United States Government, or being held up to scorn by the people.

Judge Milling's ideas were not in accord with those of the majority of the men there. They held Judge Milling in a certain kind of reverence and dignity; and they did not hiss him, or anything like that, but they certainly were not in accord with his ideas in that matter. The consensus of opinion was that the men ought to get 20 cents a pound or more. The reason for that was that one of our places had started to grind the cane, and I had already sold sugar into Shreveport at 20 cents; part of that sugar I delivered at 22 cents and part of it I delivered at 20 cents.

And when this conference looked like it was going to come to an agreement, I got up and walked out. I would not come to any agreement as to the price of sugar. I did not think it was right that every other article of commerce could be sold according to the laws of supply and demand; that everything I had to purchase—fuel oil, containers for sugar, cowpeas, and everything that went into the manufacture of sugar—was sold according to the laws of supply and demand, and that we were not allowed to sell our product according to those laws.

Mr. SUMNERS. Well, we are not here to go into those questions.

Mr. DICKINSON. Well, I want to tell you why I would not agree to any price. The conference did agree to a price; and in order to be in line with those people, sugar that I had sold at 20 cents, I delivered at 18 cents.

Mr. SUMNERS. Did you then get in touch with the district attorney? Do you know anything about that? How did that conference with the district attorney develop?

Mr. DICKINSON. That conference with the district attorney, as closely as I can recall it, was due to the fact that when we were up here in Washington, we telegraphed down to the American Cane Growers' Association, of which I am not a member, asking them to have a general mass meeting of the sugar producers and other people—to have them come together and see if they could arrive at a price where the—

Mr. SUMNERS (interposing). Yes, I understood that; but how did the district attorney get into it?

Mr. DICKINSON. I will tell you how the district attorney got into it. I will go back a little: When we were up here we went to see Attorney General Palmer and we presented our case to him, just as I have partially presented it to you here to-day. We told him that we anticipated a very short crop, and that everything that we bought was very high; that we had to sell in a restrained and restricted market, and we wanted to know if we could get any consensus of opinion about sugar.

Attorney General Palmer said, "Go home and run your business along business lines." And he said, as Mr. Pharr told you, "I will promise you no immunity bath, but run your business along business lines, and I do not think any harm will come to you."

In trying to arrive at a price that would not be against the Attorney General's ideas, I think Mr. Mooney consulted him. I think I consulted him myself; I will not be positive about that. I knew Mr. Mooney and I talked with him about what I thought would be the trend of prices. These things gradually came out in that conference when Mr. Mooney was present.

Now, in setting a price down there, it was not a guaranteed price to us at all. We were told that if we did not sell sugar above 18 cents, no harm would come to us; we could sell it as low down as possible. As a matter of fact, I did sell the second sugar from the 1920 crop, as you gentlemen term it, at 12 cents a pound.

Mr. HUSTED. You did sell what at 12 cents a pound?

Mr. DICKINSON. The second grade sugar; that is, the second boiling.

Mr. HUSTED. How does that second grade sugar differ from the first grade sugar?

Mr. DICKINSON. It differs from what is known as the plantation granulated which we manufacture and which goes directly to the consumers; that is a bright, sparkling, scintillating sugar. The residue from boiling that sugar is called "molasses"; that is reboiled to make what is technically known to us as "massecuite"; that is then put into large containers where it will "grain up"; it will take some little time for that to grain up; sometimes a month and sometimes two months. That is then put into a centrifugal machine to polarize it; and that is a dark sugar that will polarize anywhere from 82 to 93 degrees of saccharine contents. Now, that sugar sold as low as 12 cents a pound.

Mr. SUMNERS. How did you come out on your plantation?

Mr. DICKINSON. Do you mean in 1919?

Mr. SUMNERS. Yes.

Mr. DICKINSON. I think we made about 6 per cent on our crops.

Mr. SUMNERS. What was your yield?

Mr. DICKINSON. Do you mean per ton of cane? Do you mean how many pounds of sugar per ton?

Mr. SUMNERS. No; I mean how many tons did you get? How much sugar did you get?

Mr. DICKINSON. I will tell you that. In 1919, on our plantation, we ground 62,000 tons of cane. In 1920, as you gentlemen term it, we ground 22,000 tons. In 1918, we made 54,000 tons of cane on our place. In 1920, as you would term it, we made 10,000 tons of cane on our place.

Mr. SUMNERS. Now, how did you come to make 6 per cent with that small cane yield?

Mr. DICKINSON. One of the reasons is that we are one of the most efficient houses in Louisiana. We have a nine-roller mill, and a crusher, and we saturate our cane to get every ounce of sugar out of the cane. By "saturation" I mean we pour water on it, and we saturate it to wash every bit of sugar we possibly can out of our cane.

Mr. HUSTED. I have no further questions.

Mr. BOIES. I wanted to ask one question: Is there any means, by chemical analysis or otherwise, to distinguish between the granulated sugar from New Orleans or from Louisiana and the granulated sugar from Cuban sugar cane?

Mr. DICKINSON. If you mean by that to take a Louisiana raw sugar, which is known as 96 degrees test sugar, and manufacture it up and make refined granulated sugar by a bone-black drying process, and if you take Cuban sugar and manufacture it up by the same process, nobody can tell the difference.

Mr. BOIES. There is no way of telling the difference?

Mr. DICKINSON. Not that I know of. In making plantation granulated sugar direct from cane, it has not quite the purity that bone-black refined sugar has; in other words, bone-black refined sugar is supposed to be 100 per cent pure; Louisiana plantation granulated will go from 95.5 to 99 degrees of purity. That is due to a very thin layer of molasses, so thin that it can hardly be computed, being left on the crystal of sugar.

Mr. HUSTED. That is all, Mr. Dickinson.

Mr. TINKHAM. I would like to ask Mr. Dickinson some questions about Cuban sugar, Mr. Chairman.

Mr. SUMNERS. Have you any further statement to submit, Mr. Dickinson?

Mr. DICKINSON. Yes; I have a further statement that I would like to make. I want to say that one of the reasons why I thought I was justified in getting 22 cents for my sugar instead of 17 cents was according to the laws of supply and demand. Practically every State, except five or six States in the far Northwest, had been demanding our sugar; we had demands from ice cream men, from individual consumers, from brokers, and from dealers. The most of my demands for sugar was from individuals who were sending me checks—not that I would designate any price; they would send me a check—those were from the State of Massachusetts, and particularly from the city of Worcester. In 1917, I expressed to the town of Worcester a solid carload of sugar; and those people who got that sugar in 1917 were all writing to me again to please let them have sugar. In fact, I have right here a photographic copy of a check which was sent to me. I have here a letter from the Sherman Envelope Co., of Worcester, Mass., which if you will permit me to read, will throw some light on the matter.

Mr. HUSTED. I have no objection.

Mr. DICKINSON. The letter is from the Sherman Envelope Co., of Worcester, Mass., and is dated September 16, 1919; it is as follows:

P. S. MATTHEWS SUGAR MILLS,
Matthews, Lafourche County, La.

GENTLEMEN: You will recall probably that a year or two ago we bought about 5,000 pounds of granulated sugar from you, and you shipped it to us by express. We wonder if you are in a position to send us another carload of sugar, and probably this would come by freight. If so, how much sugar is there in a car, and what would be your price per pound? Would it come in barrels or bags? If in bags, how many pounds in a bag?

Please wire us night letter at our expense just what you can do for us, and oblige,
Yours, truly,

SHERMAN ENVELOPE CO.,
JOHN A. SHERMAN, *Treasurer.*

P. S.—We have just wired you as follows:

Can you ship us carload white granulated sugar? If so, wire number pounds in car and price per pound. How quick could you ship? Would it come in bags or barrels? Wire night letter our expense.

Now this is a typical letter, not of dozens, but of hundreds of letters that I have received from all over the country. Only a few days ago, I received two letters from Amsterdam, Holland, asking me if I could not ship them sugar.

Now, as a further remark, if you will permit me to inject it—and I think it will throw some light on the subject—let me say that one of the reasons that you have such a high price for sugar to-day is that in 1913 there was nearly a 19,000,000 ton crop made; to be correct, it was about 18,750,000 tons. Last year there were not over about 16,000,000 tons made. Eminent statisticians figured that the Cuban crop, this 1920 crop, would be 4,500,000 tons. The same eminent statisticians have now reduced that figure to 3,900,000 tons. Men who are now employees at our plantation, but who have been working in Cuba, have told me that they doubt very much whether the Cuban crop will be over 2,500,000 tons. In other words, the Cuban crop is about 25 per cent short of what it was estimated at. And I think there is the whole milk in the coconut about the high price of sugar.

Furthermore, there has been recently sent from Cuba to Australia 60,000 tons of raw sugar—

Mr. SUMNERS (interposing). What percentage of the Louisiana crop is going into consumption, or to retail distribution, now?

Mr. DICKINSON. Outside of a small trifle of seconds that may be left in somebody's sugar house, all of it.

Mr. SUMNERS. How long did it take you to distribute this crop this year?

Mr. DICKINSON. Prior to the 1st of January. On my own plantation we finished about the 12th of December.

Mr. SUMNERS. How long a period of distribution was that?

Mr. DICKINSON. The period of distribution was from November to December, about the 10th or the 12th, somewhere along that time.

Mr. SUMNERS. That is all.

Mr. TINKHAM. I would like to ask one or two questions: What was your cost of production a year ago, do you know?

Mr. DICKINSON. I can not tell you that.

Mr. TINKHAM. Do you know what your cost of production this year has been?

Mr. DICKINSON. I can tell you that it cost more than what we got for our cane—over \$17 a ton.

Mr. TINKHAM. But I want to know the cost, roughly.

Mr. DICKINSON. Well, I can tell you roughly that it cost us over \$17 a ton.

Mr. TINKHAM. You do not know what the spread of your costs last year over this year was?

Mr. DICKINSON. No; only that it was very considerable indeed.

Mr. TINKHAM. Do you mean over 100 per cent?

Mr. DICKINSON. It was over 100 per cent.

Mr. TINKHAM. Was it over 200 per cent.

Mr. DICKINSON. No; I could not say that.

Mr. TINKHAM. It was somewhere between 100 and 200 per cent increase in cost between a year ago and your product of this year?

Mr. DICKINSON. About that.

Mr. TINKHAM. Now, as to the Cuban sugar coming to Louisiana, is there any Cuban sugar coming to Louisiana to be refined?

Mr. DICKINSON. Quite a considerable amount; quite a considerable amount at this season of the year generally comes to Louisiana to be

refined. The American Sugar Refining Co.'s refinery is located at Chalmette, near New Orleans. The Henderson Sugar Refinery is located at New Orleans. There is also located near New Orleans what is known as the Grammercy Refinery, at Grammercy, La. There is also located at Reserve, La., the Godchaux Refinery.

Mr. HUSTED. We do not want to go into all of that, do we?

Mr. TINKHAM. All I wanted to know is, in a general way, whether Cuban sugar was refined in Louisiana.

Mr. HUSTED. Well, they have already testified that it was; that there is a very large amount of Cuban sugar refined in Louisiana.

Mr. TINKHAM. As I understand it, this year there was a very large increase in the amount refined in Louisiana.

Now, I would like to ask one more question, as you are an expert sugar manufacturer, as well as wholesaler; In your opinion, what was to prevent that Cuban sugar, which was refined in Louisiana, going to centers of distribution, such as New York or Chicago, or St. Louis, and being sold at retail at the Louisiana price?

Mr. DICKINSON. The reason it could not be done is because Cuban raw sugar is now worth 20 cents a pound.

Mr. TINKHAM. But it was not at that time; it was only worth 7 cents a pound at that time.

Mr. DICKINSON. I do not know of any that was bought at 7 cents; you may know of some.

Mr. TINKHAM. Do you not know of any that was bought at that price in November?

Mr. DICKINSON. I do not.

Mr. TINKHAM. Well, Willett & Gray's quotations give that price at that time.

Mr. DICKINSON. Well, I have no doubt that the American Sugar Refining Co. could have bought some at about those figures.

Mr. TINKHAM. Let us assume that Cuban sugar was selling at 7 cents a pound in Cuba; it was selling after November 8, at 17 cents in Louisiana; Cuban sugar—

Mr. DICKINSON (interposing). What do you mean by "after November 8, Cuban sugar was selling at 17 cents"?

Mr. TINKHAM. I mean Louisiana sugar was selling at 17 cents after November 8.

Mr. DICKINSON. Oh.

Mr. TINKHAM. Now, what was to prevent Cuban sugar from coming to Louisiana and being refined there, and then sold at retail—

Mr. DICKINSON (interposing). At that time?

Mr. TINKHAM. Yes; and subsequently.

Mr. DICKINSON. Well, at that time the only reason was that there was not any of it there at that time.

Mr. TINKHAM. When did they start refining Cuban sugar?

Mr. DICKINSON. They start about the middle of December.

Mr. TINKHAM. At that time the Cuban sugar market price was 10 cents—in December. Now, what was to prevent a man buying sugar in Cuba at 10 cents, taking it to Louisiana, having it refined, and then sending it to Chicago or St. Louis and selling it as Louisiana sugar, and getting the Louisiana price for it?

Mr. DICKINSON. I do not know of anything that is to prevent him from doing that, but I do not know that anybody has done it.

Mr. TINKHAM. I do not either.

Mr. DICKINSON. You could have done it, just as the Louisiana people could have done it, but I do not know of any that did it.

Mr. TINKHAM. Just one other question along that general line: There is no way of distinguishing between Louisiana and Cuban sugar at retail, is there?

Mr. DICKINSON. What do you mean by that? Do you mean refined sugar?

Mr. TINKHAM. Refined sugar, yes.

Mr. DICKINSON. I do not exactly understand your question.

Mr. TINKHAM. I mean by that, how does refined Cuban sugar differ from Louisiana refined sugar?

Mr. HUSTED. He means if you have a barrel of Cuban sugar and a barrel of Louisiana sugar side by side, how would you identify each one of those by the physical appearance; how could you tell the one from the other?

Mr. DICKINSON. An ordinary sugar buyer could not do so. A sugar expert might; but an ordinary sugar buyer could not differentiate.

Mr. TINKHAM. He could not do it?

Mr. DICKINSON. No.

Mr. TINKHAM. What is your opinion as an expert on the subject of sugar—what is your opinion on this point? If the price of Louisiana sugar was 17 and 18 cents, when it got into the retail trade would it not have a tendency to tempt the retailers to sell all of their sugar on the Louisiana base, rather than on any other, if the Louisiana base was the highest base?

Mr. DICKINSON. Well, I do not know that there was any more temptation to do that with sugar than there was with any other commodities that they were handling.

Mr. TINKHAM. No; but the general tendency would be to call it Louisiana sugar, no matter what it was?

Mr. DICKINSON. Well, the Louisiana people are not responsible for what the New York or the Indianapolis retailers, or anybody else does.

Mr. TINKHAM. I was not suggesting that they were.

Mr. DICKINSON. They have their own row to hoe, and it was a very hard row to hoe. And those that I associate with are all honest men, trying to make an honest living, under very trying circumstances; they had been picked out as the "goat" for some time.

Mr. HUSTED. That is all.

STATEMENT OF MR. JOE BRYAN CHAFFE, SECRETARY-TREASURER OF THE PARISH LANDS CO., NEW ORLEANS, LA.

(Mr. Chaffe was sworn by Mr. Husted.)

Mr. HUSTED. You are a producer of sugar cane?

Mr. CHAFFE. Yes, sir; I am secretary-treasurer of the Parish Lands Co. and secretary-treasurer and general manager of three subsidiary companies, the Laurel Grove Co., located on the Bayou La Fourche, the Long View Co. located on the eastern side of the sugar district, and the Rose Hill Co. (Inc.), situated in Vermillion Parish at the extreme western part of the sugar district, and we also have one little plantation located near Baton Rouge.

Mr. HUSTED. You raise cane?

Mr. CHAFFE. We do, sir.

Mr. HUSTED. And you crush the cane?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. You manufacture raw sugar?

Mr. CHAFFE. We manufacture sugar direct from the cane. We have made no raw sugar for several years.

Mr. HUSTED. Do you make granulated as well as clarified sugar?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. You make both?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. You also refine sugar?

Mr. CHAFFE. We have refined some in recent years; yes, sir.

Mr. HUSTED. So that you have quite a broad general experience in sugar production?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. From the land to the finished product?

Mr. CHAFFE. Yes, sir; an experience of nearly 40 years.

Mr. HUSTED. Do you prepare the cost sheets?

Mr. CHAFFE. They are prepared under my supervision.

Mr. HUSTED. And you are familiar with the various prices?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. Have you prepared any sheets showing the cost of production on any particular plantation or plantations of the sugar crop of 1920?

Mr. CHAFFE. On all of those of which I am general manager.

Mr. HUSTED. Was there very much variation in crop conditions on the different plantations?

Mr. CHAFFE. Quite a wide variation.

Mr. HUSTED. How wide are these variations?

Mr. CHAFFE. With your permission I will read you a report. At the plantation in East Baton Rouge it cost us \$8.87 per ton to produce a ton of cane and market it; at Long View it cost us \$12.85 to produce and deliver to the factory; on the plantation at Laurel Grove it cost us \$15.68.

Mr. HUSTED. Would it bother you if I interrupted you there; what do you mean by the cost of producing a ton of cane?

Mr. CHAFFE. I mean the cost of preparing the land in the fall of the year, or the spring, the planting of the seed and the cultivating of it, and then the cutting and hauling and delivering to the factory.

Mr. HUSTED. But you do not include the cost of crushing?

Mr. CHAFFE. That comes under the head of manufacture.

Mr. HUSTED. This is all cost of growing and planting up to delivery to the factory for crushing?

Mr. CHAFFE. Yes, sir. On the Trial plantation at Laurel Grove it cost \$26.05 and at the Rose Hill plantation \$28.08 per ton of cane, and at the Ramsey plantation of the Rose Hill group \$30.61 per ton of cane.

Mr. HUSTED. Now, for each one of these plantations can you—and if you can, will you—give us the percentage of the normal crop yield in 1919?

Mr. CHAFFE. I have not got it in that form exactly, but I can approximate it, and if you will accept the 1918 crop figures as a normal crop—it was practically a normal crop with us—I can give you figures. On the little plantation, 3,100 tons of cane as against 5,800 the year

before, approximately 65 per cent less. On the Long View plantation, 2,877 tons of cane in 1919 crop against 9,425 tons of cane in 1918.

Mr. HUSTED. That was a small plantation?

Mr. CHAFFE. About 900 acres in cultivation. We use the term crop for the year because our crop is planted and harvested complete, and we only speak of the crop as lapping into another year until harvested.

Mr. HUSTED. What you call the crop of 1919 is what we have been calling the crop of 1920?

Mr. CHAFFE. Yes, sir; but my reports are all made up by the year, so that I speak of the year for which the report is made up, and not for the current year.

Mr. HUSTED. I think you are quite right because your crop was all made in 1919 and practically all sold within that year.

Mr. CHAFFE. At Laurel Grove in 1919 there were 3,287 tons of cane against 15,115 in 1918; the Enterprise plantation, 950 tons in 1919 against 3,456 tons in 1918, and at the Trial plantation, 1,367 tons in 1919 against 8,841 tons in 1918.

Mr. HUSTED. Does that complete it?

Mr. CHAFFE. That completes these two groups.

Mr. HUSTED. There are some more plantations?

Mr. CHAFFE. Yes, sir. The Rose Hill plantation, 979 tons in 1919 as against 3,376 tons in 1918, and the Ramsey plantation, 714 tons in 1919 as against 2,400 tons in 1918.

Mr. HUSTED. Now, will you be good enough to give us the cost of crushing cane into sugar, so that we can get the total cost?

Mr. CHAFFE. Yes, sir; but permit me to say that in these figures I am giving you, they do not take in any overhead cost nor do they consider any rental for lands; those are operating costs.

Mr. HUSTED. You mean by that that these are only the prime costs?

Mr. CHAFFE. Yes, sir; the cost for labor and material; the amount of money I spend per ton of cane to produce it and bring it to the factory.

Mr. HUSTED. And do you not include in that any salaries?

Mr. CHAFFE. No, sir; no salaries are included except the overseers of plantations; the superintendents of fields are not included therein.

Mr. HUSTED. That is what we call prime costs.

Mr. CHAFFE. I presume so; yes, sir.

Mr. HUSTED. You do not include any administration expense?

Mr. CHAFFE. No, sir.

Mr. HUSTED. Do you include deterioration?

Mr. CHAFFE. That is not included in these figures.

Mr. HUSTED. Is any insurance included?

Mr. CHAFFE. No, sir.

Mr. HUSTED. Now, I want to see if I understand you clearly; that is, what you say in regard to the figures already given.

Mr. CHAFFE. I have only given you figures on the cost of producing.

Mr. HUSTED. When we get through, I want all of the ultimate costs, so that we will have a total.

Mr. SUMNERS. The figures you have given include nothing but seed and labor?

Mr. CHAFFE. I will read you the items which constitute the expense; maintenance and repairs, that is, to our roads, bridges, ditches, and repairs of buildings and repairs of implements and gear, and that means planting and cultivating for spring planting, and planting and cultivating for fall planting; hoes, shovels, and fertilizer for the cane; harvesting, cane-cutting, loading and, hauling. There is no charge for the seed-cane used, the seed necessary for planting the crop of cane for the 1919 crop was worth \$8.72 per ton, and it takes a minimum of five tons to the acre.

Mr. SUMNERS. Why do you not put that in?

Mr. CHAFFE. Because we count that one crop owes the next crop its seed, and it is not usually done. There have been changes in our plantation accounting to the extent that they have incorporated that as part of the charge of producing a ton of cane.

Mr. HUSTED. You get that seed from your own fields?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. You do not plant every year?

Mr. CHAFFE. Yes, sir; we plant approximately one-third of our area in sugar cane each year.

Mr. HUSTED. I understand, but what I mean is that the seed when once planted is good for three years.

Mr. CHAFFE. No, sir; two years.

Mr. HUSTED. Only two years?

Mr. CHAFFE. Yes, sir; only occasionally is the stubble kept longer than one year.

Mr. SUMNERS. You spoke of the purchase of tools.

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. Supposing that you purchased new tools in 1919, do you charge up the full value of those tools the next year?

Mr. CHAFFE. No, sir; at the beginning of each year we take an inventory of the implements and gear and other things and charge it against that year's cost, and for any new ones we buy we charge them against this crop.

Mr. SUMNERS. That is, you make each year stand its proportion?

Mr. CHAFFE. Yes, sir; and we carry forward our implements at a valuation they would bring. I believe I stipulated all of the things—that is, the harvesting of the cane and the expense of planting, cultivating, harvesting, and the fertilizers used. The general expense we have had is overseers and the salary items, which are charges that you account for in the overhead, and this has brought down our total expense. Against that you deduct this expense from your total income for the year: that is, the value of 2,877 tons of cane delivered to the factory at so many dollars, and the corn and hay crop so many dollars, and deduct your expense and it brings down your net earnings, which is afterwards reduced to the ton of cane; the unit of cultivation is per acre, and from and after the beginning of the sugar making our unit is the ton of sugar cane.

Mr. HUSTED. Now, we have got up to the point of delivery of the cane to the factory, and if you will give us the cost for each one of these factors of the crushing of the cane and the making of the sugar, we can arrive at the cost.

Mr. CHAFFE. Last year it cost us at Long View factory, inclusive of overhead, \$4.38 per ton.

Mr. HUSTED. To do what?

Mr. CHAFFE. To manufacture that cane and to maintain the plant there during the year and have it ready to operate at the time we began to make sugar, which cost us \$4.38 at Long View.

Mr. HUSTED. How does that compare with the year before at that particular factory?

Mr. CHAFFE. About \$1.25 per ton less.

Mr. HUSTED. It was \$1.25 per ton less in 1918 than it was in 1919?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. And is that pretty correct?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. How wide a margin?

Mr. CHAFFE. Not more than 15 cents.

Mr. HUSTED. That is all?

Mr. CHAFFE. That is per ton of sugar cane; that is my unit of calculation.

Mr. HUSTED. And that is about how many pounds of sugar?

Mr. CHAFFE. That varies. Ten years ago we had this statement made up which will show you that it varies all the way from 129 pounds of sugar to 196 pounds.

Mr. HUSTED. Can you give the figures in terms of sugar yield in 1919 and 1918?

Mr. CHAFFE. Yes, sir; I think I can. Long View sugar factory—

Mr. HUSTED. That is the one we have been talking about?

Mr. CHAFFE. Yes, sir; only in 1918 the figures are not very good for comparison because I made sirups that year of quite a liberal portion of the crop and therefore it is not a good report to refer to and it is preferable to refer to the report of Laurel Grove where we made all sugars in both seasons.

Mr. HUSTED. Can you not translate the sirups into terms of sugar?

Mr. CHAFFE. Not very readily; in fact, not readily enough to be able to give you the figures in 1918 at the Laurel Grove factory. Our production in first sugars, permit me to say that we count sugars of different qualities as firsts, seconds, and thirds.

Mr. HUSTED. There is always a residuum?

Mr. CHAFFE. Yes, sir. In 1918 our results were in firsts 125 pounds, and in seconds 34 pounds; and in 1919 the results in firsts were 110.1 pounds and in seconds 25.61 pounds; the total in 1918, 159 pounds, and in 1919, 135.7 pounds.

Mr. SUMMERS. There were no thirds sugars in either year?

Mr. CHAFFE. No, sir; it paid better to sell molasses than to work it into thirds.

Mr. HUSTED. How much by-product, which is marketable, do you get in the manufacture of a ton of sugar cane?

Mr. CHAFFE. In 1918 we got 5 gallons of molasses and in 1919 we got 5.1 gallons.

Mr. HUSTED. That is from 1 ton of cane?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. And in figuring your profits on sugar do you include what you get from the molasses?

Mr. CHAFFE. Certainly; the results in average net proceeds for instance, net proceeds of first and seconds and net proceeds per gallon

of molasses and the average net proceeds per pound of sugar including the molasses is stated here, so that you can make the comparison.

Mr. HUSTED. What I meant was that generally speaking, in figuring the profit and loss account in the manufacturing of sugar, are the receipts from the sale of the molasses credited to sugar?

Mr. CHAFFE. Certainly, it is credited to the credit side of the factory's operation, which throws it all into a single credit and then you have the average net proceeds.

Mr. HUSTED. Your figures are very clear, but what I want to find out is what is the general practice, when people say you use everything that comes from the sugar cane, just what does that mean?

Mr. CHAFFE. They are talking about everything we get from a ton of cane.

Mr. HUSTED. That is quite clear. Now, then, if you will be kind enough to give us the relative cost in your other factories?

Mr. CHAFFE. Long View, as I explained a few minutes ago, in 1918 made sirup, and the Rose Hill figures in that period are only relative because the last year crop here was so poor that we were not justified in operating that plant because the maintenance charge for putting that plant in order again for operation, of probably \$12,000 to \$15,000, was so great that we did not feel justified in operating it.

Mr. HUSTED. Would you say that if you had had nothing but sugar in the other factory that the cost of production ratio as between 1918 and 1919 would be about the same for the other factories?

Mr. CHAFFE. The variation would be wider in the Long View factory than it would be at Laurel Grove for the reason that Long View is located between two sawmills, and as these sawmills are constantly bidding for labor we must pay our labor a little more than we do at the other two locations, and for that reason the figures of the cost at Long View would be greater.

Mr. HUSTED. Now, have you given us all the figures from which the total cost can be computed?

Mr. CHAFFE. I do not know if there are any others.

Mr. HUSTED. You have given us the figures from which the total cost can be computed?

Mr. CHAFFE. You did not ask for the cost of manufacture but the cost of sugar-cane production.

Mr. HUSTED. What I want to get at is the cost; that is, all the items of cost from the time you stick in the cane until you sell your finished product on the market.

Mr. CHAFFE. The total return from a ton of cane. I have that here in a statement which I might just give you.

Mr. HUSTED. We would be glad to have that statement and to make it a part of the record. Are these your figures?

Mr. CHAFFE. These are my figures; that is, they are the original figures prepared in my office from which the report is made.

Mr. HUSTED. If you will leave that it will be incorporated in the record.

258 INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR.

(Statement referred to is as follows:)

Comparative earnings and expenses per pound of sugar and ton of cane, including general expenses for the years 1918 and 1919.

(Italic figures show decrease.)

	Laurel Grove Co.		Increase or decrease.	Longview Sugar Co.		Increase or decrease.
	1919	1918		1919	1918	
Cane received and ground tons	16,228	59,436	43,208	15,429	35,049	19,620
Products:						
First sugar pounds	1,786,714	6,671,131	4,884,417	1,768,668	4,905,925	3,137,257
Second sugar do.	415,668	2,042,299	1,626,631	361,053	.....	361,053
Third sugar do.	.....	733,878	733,878	202,500	19,648	182,852
Total sugar do.	2,202,382	9,447,308	7,244,926	2,332,221	4,925,573	2,593,352
Molasses gallons	82,934	275,000	192,066	63,700	8,000	55,700
Average gross proceeds per pound of sugar, including molasses	\$0.174	\$0.078	\$0.096	\$0.158	\$0.081	\$0.077
Average cost per pound of sugar:						
Maintenance .....	.010	.003	.007	.006	.005	.001
Manufacture .....	.016	.012	.004	.014	.010	.004
Sugar cane .....	.128	.051	.077	.110	.058	.052
General expenses .....	.023	.005	.018	.010	.005	.005
Total .....	.177	.071	.106	.140	.078	.062
Average net loss per pound of sugar, including molasses .....	.003	.007	.010	.018	.003	.015
Average gross pounds per ton of cane ground	23.62	12.48	11.14	23.86	11.38	12.48
Average cost per ton of cane ground:						
Maintenance	1.31	.40	.91	1.00	.71	.29
Manufacture	2.12	1.99	.13	2.17	1.32	.85
Sugar cane	17.21	8.20	9.01	16.53	8.14	8.39
General expenses	3.14	.78	2.36	1.55	.64	.91
Total	23.78	11.37	12.41	21.25	10.81	10.44
Average net loss per ton of cane ground .....	.16	1.11	1.27	2.61	.37	2.04

Longview Sugar Co., comparative statement of factory operations for the years 1918 and 1919.

	1919	1918	Increase or decrease.	Cost per ton, 1919.	Cost per ton, 1918.	Increase or decrease.
Gross proceeds of sirup and sugar.						
Earnings:						
Sirup, 724,009 gallons, 1918		\$397,726.29	\$397,726.29		\$11.35	\$11.35
First sugar ¹	\$311,293.68	5,990.87	305,302.81	\$20.18	.17	20.01
Second sugar	41,571.12	.....	41,571.12	2.69	.....	2.69
Third sugar ²	16,200.00	982.40	15,217.60	1.05	.02	1.03
Molasses	3,822.00	480.00	3,342.00	.25	.02	.23
Total gross proceeds	372,886.80	405,179.56	32,292.76	24.17	11.56	12.61
Less:						
Brokerage	280.00	.....	280.00	.02	.....	.02
Commission	4,152.13	5,966.03	1,813.90	.27	.18	.09
Exchange	253.95	.....	253.95	.02	.....	.02
Weighing and gauging	8.00	171.00	163.00	.....	.....	.....
Total	4,694.08	6,137.03	1,442.95	.31	.18	.13
Net proceeds	368,192.72	399,042.53	30,849.81	23.86	11.38	12.48
Expenses:						
Payment for cane	256,011.98	285,292.37	29,280.39	16.53	8.14	8.39
Maintenance and repairs .....	.....	.....	.....	.....	.....	.....
Repairs of buildings	1,547.55	1,687.20	139.65	.10	.05	.05
Repairs of engines and boilers	3,122.80	4,097.82	975.02	.20	.12	.08
General machinery repairs	7,325.17	15,277.84	7,952.67	.47	.45	.02
Repairs and renewal of equipment and tools	1,398.72	536.33	862.39	.10	.02	.08
Maintenance of equipment	484.30	1,582.66	1,098.36	.03	.06	.03
Maintenance of track	1,580.47	648.05	942.42	.10	.02	.08
Total	15,459.01	23,829.90	8,370.89	1.00	.71	.29

¹ First sugar crop 1918, raw.

² Third sugar and molasses 1919, crop estimated.

INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR. 259

Longview Sugar Co., comparative statement of factory operations for the years 1918 and 1919—Continued.

Gross proceeds of sirup and sugar.	1919	1918	Increase or decrease.	Cost per ton, 1919.	Cost per ton, 1918.	Increase or decrease.
Factory expenses:						
Factory labor.....	\$13,042.52	\$20,472.15	\$7,429.63	\$0.84	\$0.61	\$0.23
Fuel.....	7,093.47	18,471.14	11,377.67	.46	.53	.07
Oil packing and waste.....	503.31	709.07	205.76	.03	.02	.01
Lime sulphur and acids.....	1,161.47	1,522.10	360.63	.08	.05	.03
Sugar bags and barrels.....	6,106.34	87.82	6,038.52	.40	.00	.40
Other factory supplies.....	3,681.47	2,791.70	889.77	.24	.07	.17
Lodging house.....	139.52	30.10	109.42	.01	.00	.01
Boarding house.....		127.28	127.28	.00	.00	.00
River pumping station.....	306.00		306.00	.02		.02
Tramway operation.....	578.22	1,023.01	444.79	.04	.03	.01
Labor transportation.....	349.35	162.15	187.20	.02	.00	.02
Odds and yards.....	512.89	240.32	272.57	.03	.01	.02
Total.....	33,474.56	45,616.84	12,142.28	2.17	1.32	.85
Total expenses.....	304,945.55	354,739.11	49,793.56	19.70	10.17	9.53
Net earnings.....	63,247.17	44,303.42	18,943.75	4.16	1.21	2.95

Longview Sugar Co., comparative statement of factory operations for years 1918 and 1919.

[Italic figures show decrease.]

	1919	1919	1918	1918	Increase or decrease.
Cane received and ground..... tons..	15,429		35,049		19,620
Number of calendar days' grinding.....	39		99		60
Number of actual days' grinding time.....	35		63		28
Loss of time, per cent available time.....	0.10		0.36		0.26
Average number of tons ground per day available time.....	396		354		42
Average number of tons ground per day actual time.....	441		556		115
Average cost of cane per ton at factory.....		\$1,653		\$814	\$8.39
Products:					
Sirup..... gallons.....			724,009		724,009
First sugars ¹ pounds.....	1,768,668		73,165		1,695,503
Second sugars..... do.....	361,053				361,053
Third sugars ² do.....	202,500		19,648		182,852
Total sugars..... do.....	2,332,221		92,813		140,408
Molasses..... gallons.....	63,700		8,000		55,700
Average per ton of cane:					
Sirup..... gallons.....			21		21
First sugars ¹ do.....	114.63		79.78		34.85
Second sugars..... do.....	23.40				23.40
Third sugars ² do.....	13.06		21.42		8.36
Total sugars..... do.....	151.12		101.20		49.92
Molasses..... gallons.....	4.00		8.72		472
Average net proceeds per gallon, sirup and sugar.....			.0553		\$0.0553
Average net proceeds per pound, sugar.....		.1563			.1563
Average net proceeds per pound-sugar, including molasses.....		.1579			.1579
Average cost per gallon sirup:					
Maintenance.....			.033		.033
Manufacture.....			.065		.065
Sugar cane.....			.394		.394
Total.....			.492		.492
Average cost per pound of sugar:					
Maintenance.....		.0066			.0066
Manufacture.....		.0143			.0143
Sugar cane.....		.1098			.1098
Total.....		.1307			.1307
Net earnings per gallon of sirup.....			.061		.061
Net earnings per pound of sugar.....		.272			.272
Average net proceeds per ton of cane ground.....		23.86		11.38	12.48
Average cost per ton of cane:					
Maintenance.....		1.00		.71	.29
Manufacture.....		2.17		1.32	.85
Sugar cane.....		16.53		8.14	8.39
Total.....		19.70		10.17	9.53
Average net earnings (general expenses not deducted) per ton of cane.....		4.16		1.21	2.95

¹ 1918 crop of first sugars raw.

² 1919 crop of third sugars and molasses estimated.

260 INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR.

Longview Sugar Co. Comparative statement of agricultural operations for the years of 1918 and 1919.

[Italic figures show decrease.]

	1919	1918	Increase or decrease.	Cost per ton, 1919.	Cost per ton, 1918.	Increase or decrease.
Earnings:						
Cane shipped to factory.....	\$46,298.20	\$73,246.79	<i>\$26,948.59</i>	\$16.09	\$7.77	<i>\$8.32</i>
Corn and hay crop.....	3,475.00	2,900.00	<i>575.00</i>	1.21	.81	<i>.90</i>
Total.....	49,773.20	76,146.79	<i>26,373.59</i>	17.30	8.08	<i>9.22</i>
Expenses:						
Maintenance and repairs—						
Roads and bridges.....	76.16	129.15	<i>52.99</i>	.08	.01	<i>.02</i>
Ditches and ditch banks....	941.78	813.28	<i>128.50</i>	.33	.09	<i>.24</i>
Repairs of buildings.....	1,588.85	230.06	<i>1,358.79</i>	.55	.03	<i>.52</i>
Repairs of implements and gear.....	1,662.17	1,358.64	<i>303.53</i>	.58	.15	<i>.43</i>
Total.....	4,268.96	2,531.13	<i>1,737.83</i>	1.49	.28	<i>1.21</i>
Planting and cultivating—						
Fall planting.....	2,578.00	652.36	<i>1,925.64</i>	.90	.07	<i>.83</i>
Spring planting.....	911.05	1,881.38	<i>970.33</i>	.32	.20	<i>.12</i>
Plows and cultivators (plant cane).....	502.82	.....	<i>502.82</i>	.17	.....	<i>.17</i>
Hoes and shovels (plant cane).....	839.27	502.66	<i>336.61</i>	.29	.05	<i>.24</i>
Plows and cultivators (stubble).....	951.38	277.39	<i>673.99</i>	.33	.03	<i>.30</i>
Hoes and shovels (stubble).....	1,347.40	410.36	<i>937.04</i>	.47	.04	<i>.43</i>
Fertilizer.....	3,628.92	8,565.70	<i>4,936.78</i>	1.26	.91	<i>.35</i>
Total.....	10,758.84	12,289.85	<i>1,531.01</i>	3.74	1.30	<i>2.44</i>
Harvesting—						
Cane cutting, loading, and hauling.....	6,122.43	14,935.03	<i>8,812.60</i>	2.13	1.58	<i>.65</i>
Corn and hay crops—						
Planting and cultivating.....	2,009.69	1,164.06	<i>845.63</i>	.70	.12	<i>.58</i>
Harvesting.....	9.25	427.51	<i>418.26</i>	.....	.04	<i>.04</i>
Fertilizer.....	3,729.77	167.64	<i>3,562.13</i>	1.30	.02	<i>1.28</i>
Total.....	5,748.71	1,759.21	<i>3,989.50</i>	2.00	.18	<i>1.82</i>
General—						
Feed.....	5,885.35	6,540.34	<i>654.99</i>	2.05	.70	<i>1.35</i>
Stable expenses.....	1,075.80	860.71	<i>215.09</i>	.37	.09	<i>.28</i>
Overseer's salary.....	1,281.75	1,203.30	<i>78.45</i>	.44	.13	<i>.31</i>
Odds and yards.....	1,823.63	.....	<i>1,823.63</i>	.63	.....	<i>.63</i>
Total.....	10,066.53	8,604.35	<i>1,461.18</i>	2.49	.92	<i>1.57</i>
Total expenses.....	36,965.47	40,119.57	<i>3,154.10</i>	12.85	4.26	<i>8.59</i>
Net earnings.....	12,807.73	36,027.22	<i>23,219.49</i>	4.45	3.82	<i>.63</i>
Acres under cultivation:						
Plant cane.....acres..	239	225	<i>14</i>	.....	.....	.....
Stubble.....do.....	121	237	<i>116</i>	.....	.....	.....
Corn and peas.....do....	195	175	<i>20</i>	.....	.....	.....
Total.....do.....	555	637	<i>82</i>	.....	.....	.....
Cane produced.....tons..	2,877	9,425	<i>6,548</i>	.....	.....	.....
Average per acre.....do....	.....	.....	.....	5.18	14.80	<i>9.62</i>
Average receipt per ton.....do.....	.....	.....	.....	17.30	8.08	<i>9.22</i>
Average expenses per ton.....do.....	.....	.....	.....	12.85	4.25	<i>8.60</i>
Average net earnings per ton.....do.....	.....	.....	.....	4.45	3.82	<i>.63</i>
Average receipts per acre.....do.....	.....	.....	.....	89.68	119.54	<i>29.86</i>
Average expenses per acre.....do.....	.....	.....	.....	66.60	62.98	<i>3.62</i>
Average net earnings per acre.....do.....	.....	.....	.....	23.08	56.56	<i>33.48</i>

INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR. 261

Laurel Grove Co., comparative statement of factory operations for the years 1918 and 1919.

[Italics figures show decrease.]

	1919	1918	Increase or decrease.	Cost per ton, 1919.	Cost per ton, 1918.	Increase or decrease.
Earnings:						
Net proceeds of sugar and molasses.....	\$321,333.63	\$570,293.81	<i>\$248,964.18</i>	\$19.80	\$9.60	\$10.20
First sugars.....	49,890.16		49,890.16	3.07		3.07
Second sugars and third sugars and molasses.....	14,928.12		14,928.12	.92		.92
Raw sugars, 1918.....		51,083.64	<i>51,083.64</i>		.86	.86
Second and third products, estimated—						
Sugar.....		102,500.00	<i>102,500.00</i>		1.72	1.72
Molasses.....		17,875.00	<i>17,875.00</i>		.30	.30
Total.....	386,147.91	741,752.45	<i>355,604.54</i>	23.79	12.48	11.31
Less—						
Brokerage.....	148.20		148.20	.01		.01
Commission.....	2,520.49		2,520.49	.15		.15
Exchange.....	160.90		160.90	.01		.01
Total.....	2,829.59		2,829.59	.17		.17
Net proceeds.....	383,318.32	741,752.45	<i>358,434.13</i>	23.62	12.48	11.14
Expenses—						
Cane purchased—						
Payments for cane.....	276,304.77	482,563.18	<i>206,258.41</i>	17.03	8.12	8.91
Transportation and weighing.....	2,198.51	3,139.60	<i>941.09</i>	.14	.05	.09
Derrick charges.....	629.35	1,568.41	<i>839.06</i>	.04	.03	.01
Total.....	279,132.63	487,271.19	<i>208,138.56</i>	17.21	8.20	9.01
Maintenance and repairs:						
Repair of buildings.....	2,186.10	2,469.49	<i>283.39</i>	.14	.04	.10
Repair of engines and boilers.....	797.90	7,120.77	<i>6,322.87</i>	.05	.12	.07
General machinery repairs.....	8,498.83	7,807.08	691.75	.52	.13	.39
Repair and renewal of equipment and tools.....	1,110.52	485.47	625.05	.07	.01	.06
Repair of derricks and scales.....		190.40	<i>190.40</i>			
Maintenance of tramway:						
Roadway and track.....	4,658.18	3,800.20	857.98	.28	.06	.22
Equipment.....	3,223.15	1,644.69	1,578.46	.20	.03	.17
Cane car racks.....	833.00	560.44	262.56	.05	.01	.04
Total.....	21,307.68	6,005.33	15,302.35	1.31	.40	.91
Operations—						
Railroad and tramways.....	322.85	2,909.45	<i>2,586.60</i>	.02	.05	.03
Storage derricks.....	193.70	496.89	<i>303.19</i>	.01	.01	
Factory labor.....	10,073.40	37,637.39	<i>27,563.99</i>	.62	.63	.01
Fuel.....	4,783.84	32,612.81	<i>27,828.97</i>	.30	.55	.25
Oil packing and waste.....	1,180.17	1,184.95	<i>4.78</i>	.07	.02	.05
Lime, sulphur, and acids.....	2,274.18	9,433.60	<i>7,159.42</i>	.14	.16	.02
Sugar bags and barrels.....	8,901.39	22,917.03	<i>14,005.64</i>	.55	.39	.16
Other factory supplies.....	5,498.29	7,659.30	<i>2,161.01</i>	.34	.13	.21
Labor transportation.....	719.44	720.60	<i>1.16</i>	.04	.01	.03
Lodging house.....	374.09	583.28	<i>209.17</i>	.02	.01	.01
Boarding house.....		93.05	<i>93.05</i>			
Odds and yards.....	165.85	696.64	<i>530.79</i>	.01	.01	
Operating bayou pump station.....		1,457.45	<i>1,457.45</i>		.02	.02
Total.....	34,487.20	118,402.42	<i>84,015.22</i>	2.12	1.99	.13
Total expenses.....	334,927.51	629,752.15	<i>294,824.64</i>	20.64	10.59	10.05
Net earnings.....	48,390.81	112,000.30	<i>63,609.49</i>	2.98	1.89	1.09

262 INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR.

Laurel Grove Co., comparative statement of factory operations for the years 1918 and 1919—Continued.

[Italic figures show decrease.]

	1919	1918	Increase or de- crease.	Cost, 1919.	Cost, 1918.	Increase or de- crease.
Cane received and ground.....tons	16,228	59,436	43,208			
Number of calendar days grinding.....	29	110	81			
Number of days actual grinding time.....	17	55	38			
Lost time per cent available time, per cent.....	41	50	09			
Average number of tons ground per day, available time.....tons	396	540	144			
Average number of tons ground per day, actual time.....do	955	1,080	125			
Average cost of cane per ton.....				\$17.03	\$8.12	\$8.91
Transportation and other charges.....				.18	.08	.10
Total cost at factory.....				17.21	8.20	9.01
Product:						
First sugars.....pounds	1,786,714	6,671,131	4,884,417			
Second sugars.....do	415,668	2,042,299	1,626,631			
Raw sugars.....do		733,878	733,878			
Total sugars.....do	2,202,382	9,447,308	7,244,926			
Molasses.....gallons	82,934	275,000	192,066			
Average per ton of cane:						
First sugars.....pounds	110.10	1.25	14.90			
Second sugars.....do	25.61	.34	8.39			
Raw sugars.....do						
Total sugars.....do	135.71	1.59	\$3.29			
Molasses.....gallons	5.11	.05	.11			
Average net proceeds per pound of sugar:						
First sugars.....				.178	.08	.096
Second and third sugars.....				.117	.05	.067
Total.....				.167	.13	.037
Average net proceeds per gallon molasses.....				.180	.065	.115
Average net proceeds per pound sugar, in- cluding molasses.....				.175	.078	.097
Average cost per pound of sugar:						
Maintenance.....				.010	.003	.007
Manufactures.....				.016	.012	.004
Sugar cane.....				.128	.051	.077
Total.....				.154	.066	.088
Net earnings per pound sugar.....				.021	.012	.009
Average net proceeds of product per ton cane ground.....				23.62	12.48	11.14
Average cost per ton cane ground:						
Maintenance.....				1.31	.40	.91
Manufacture.....				2.12	1.99	.13
Sugar cane.....				17.21	8.20	9.01
Total.....				20.64	10.59	10.05
Average net earnings (general expenses not deducted) per ton cane.....				2.98	1.89	1.09

Laurel Grove Co. comparative statement of agricultural operations for years 1918 and 1919.

[Italic figures show decrease.]

	Laurel Grove plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.	Trial plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.
	1919	1918		1919	1918		1919	1918				
EARNINGS.												
Cane sent to factory.....	\$55,883.08	\$118,255.23	\$62,372.16	\$17.00	\$7.82	\$9.18	\$23,248.20	\$68,259.08	\$45,010.88	\$17.01	\$7.49	\$9.52
Corn and hay crops.....	1,445.60	3,736.00	2,389.40	.44	.25	.19	1,005.00	2,497.00	1,492.00	.73	.28	.45
Total.....	57,328.68	121,990.23	64,661.56	17.44	8.07	9.37	24,253.20	68,756.08	44,602.88	17.74	7.77	9.97
EXPENSES.												
Maintenance and repairs:												
Roads and bridges.....	194.50	414.21	\$19.71	.06	.03	.03	222.59	476.35	\$53.76	.16	.05	.11
Ditches and ditch banks.....	2,408.55	2,571.91	163.36	.73	.17	.56	2,062.16	1,678.23	383.93	1.51	.19	1.32
Repairs of buildings.....	1,588.38	1,934.30	345.92	.48	.06	.42	1,924.74	83.93	1,840.81	1.41	.01	1.40
Implements and gear.....	1,626.19	1,683.98	57.79	.50	.11	.39	1,573.42	1,141.95	731.47	1.37	.13	1.24
Scales and derricks.....	1,978.59	1,119.20	859.39	.....	.01	.01	.....	153.35	153.35	.....	.02	.02
Total.....	5,817.62	5,723.60	94.02	1.77	.38	1.39	6,082.91	3,533.81	2,549.10	4.45	.40	4.05
Planting and cultivating cane crop:												
Fall planting.....	4,214.86	732.83	3,482.03	1.28	.05	1.23	2,647.50	562.60	2,084.90	1.94	.06	1.88
Spring planting.....	1,217.85	1,256.61	38.76	.37	.08	.29	1,275.60	928.79	346.81	.93	.10	.83
Plows and cultivators (plant cane).....	756.65	1,269.06	512.41	.23	.08	.15	543.31	814.22	270.91	.40	.09	.31
Hoes and shovels (plant cane).....	1,856.83	1,176.07	680.76	.57	.08	.49	1,652.78	858.65	794.13	1.21	.10	1.11
Plows and cultivators (stubble).....	790.67	969.03	178.36	.24	.06	.18	591.62	778.28	186.66	.43	.09	.34
Hoes and shovels (stubble).....	882.05	1,183.19	301.14	.27	.08	.19	1,130.28	862.99	267.29	.83	.10	.73
Fertilizer.....	8,965.67	16,510.85	7,545.18	2.73	1.09	1.64	5,193.44	9,222.35	4,028.91	4.25	1.04	3.21
Drainage machine.....	1,978.59	2,704.60	726.01	.60	.18	.42	48.15	314.45	\$66.30	.03	.04	.01
Total.....	20,664.17	25,811.94	5,147.77	6.29	1.70	4.59	13,683.15	14,342.33	669.18	10.02	1.62	8.40
Harvesting cane crop:												
Cane cutting.....	5,992.89	18,441.87	12,448.98	1.82	1.22	.60	3,252.07	12,202.66	8,950.59	2.38	1.38	1.00
Cane loading.....	463.00	1,466.45	1,003.45	.14	.10	.04	342.10	51.25	290.85	.....	.01	.01
Cane transfer.....	795.49	3,589.10	2,793.61	.24	.24	.....	395.81	2,774.74	2,378.93	.29	.31	.02
Cane hauling.....	7,251.38	23,476.92	16,225.54	2.20	1.56	.64	3,986.98	16,085.66	12,098.68	2.92	1.82	1.10
Total.....	14,502.76	45,975.34	31,472.58	4.36	3.12	1.76	8,576.96	38,213.81	29,636.85	6.59	3.52	2.87

Laurel Grove Co. comparative statement of agricultural operations for years 1918 and 1919—Continued.

[Italic figures show decrease.]

	Laurel Grove plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.	Trial plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.
	1919	1918		1919	1918		1919	1918		1919	1918	
Corn and hay crops:												
Planting and cultivating.....	\$2,925.87	\$1,304.00	\$1,621.87	\$0.89	\$0.08	\$0.81	\$1,774.05	\$1,044.26	\$629.79	\$1.30	\$0.12	\$1.18
Harvesting.....	793.22	741.30	51.92	.24	.05	.19	725.91	725.91	49.44	.49	.08	.41
Fertilizer.....	1,433.74	75.04	1,358.70	.44	.01	.43	980.18	131.24	848.94	.72	.01	.71
Total.....	5,152.83	2,120.34	3,032.49	1.57	.14	1.43	3,430.70	1,901.41	1,529.29	2.51	.21	2.30
GENERAL EXPENSES.												
Tractor.....	401.81	7,822.70	401.81	.12	.....	.12	368.09	6,468.55	368.09	.27	.....	.27
Feed.....	7,935.15	1,096.47	112.45	2.41	.52	1.89	4,568.88	1,096.83	1,897.67	3.34	.74	2.60
Stable expenses.....	1,358.02	1,854.61	538.45	.41	.11	.80	1,146.05	1,096.83	50.22	.84	.12	.72
Overseer's salary.....	1,146.75	90.55	707.89	.35	.12	.23	1,230.00	1,096.00	133.00	.90	.12	.78
Bonus.....	90.55	147.60	90.55	.03	.....	.03	75.90	.....	75.90	.06	.....	.06
Bridge tender.....	683.61	1,266.92	147.60	.....	.01	.01	386.72	354.02	31.70	.28	.04	.24
Odd and yards.....	60.87	.....	60.87	.02	.....	.02	166.98	.....	166.98	.12	.....	.12
Supplies.....	984.50	.....	984.50	.30	.....	.30	469.97	.....	469.97	.34	.....	.34
Wood.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	12,651.26	12,783.20	136.94	3.85	.84	3.01	8,411.59	9,011.40	599.81	6.15	1.02	5.13
Total expenses.....	51,537.26	69,921.00	18,383.74	15.08	4.62	11.06	35,808.33	44,874.61	9,266.28	28.05	5.07	20.98
Net earnings.....	5,791.42	52,069.23	46,277.81	1.76	3.40	1.64	23,881.47	23,881.47	83,881.47	.....	2.77	2.77
Net loss.....	.....	.....	.....	.....	.....	.....	17,555.15	.....	.....	8.31	.....	.....

INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR. 265

	Enterprise plantation.		Increase or decrease.	Cost per ton.		In- crease or decrease.	Total.		Increase or decrease.	Cost per ton.		In- crease or de- crease.
	1919	1918		1919	1918		1919	1918		1919	1918	
EARNINGS.												
Cane sent to factory.....	\$16,152.72	\$27,481.58	\$11,328.86	\$17.00	\$7.95	\$9.05	\$95,284.00	\$211,995.89	\$116,711.89	\$17.00	\$7.73	\$9.27
Corn and hay crops.....	180.00	285.00	105.00	.19	.08	.11	2,630.60	6,517.00	3,886.40	.47	.24	.23
Total.....	16,332.72	27,766.58	11,433.86	17.19	8.03	9.16	97,914.60	218,512.89	120,598.29	17.47	7.97	9.50
EXPENSES.												
Maintenance and repairs:												
Roads and bridges.....	124.81	144.83	20.02	.13	.04	.09	541.90	1,035.39	493.49	.10	.04	.06
Ditches and ditch banks.....	1,022.05	959.01	63.04	1.08	.28	.80	5,492.76	5,202.15	290.61	.98	.19	.79
Repairs of buildings.....	856.50	607.24	248.26	.90	.18	.72	4,368.62	1,625.47	2,744.15	.78	.06	.72
Implements and gear.....	769.58	475.00	294.58	.81	.14	.67	4,269.19	3,300.93	968.26	.76	.12	.64
Scales and derricks.....		14.40	14.40					286.95	286.95		.01	.01
Total.....	2,772.94	2,200.48	572.46	2.92	.64	2.28	14,673.47	11,457.89	3,215.58	2.62	.42	2.20
Planting and cultivating cane crop:												
Fall planting.....	723.73	375.80	347.93	.76	.11	.65	7,556.09	1,671.23	5,914.86	1.35	.06	1.29
Spring planting.....	498.05	150.68	347.37	.62	.04	.48	2,991.50	2,336.06	655.42	.54	.09	.45
Plows and cultivators (plant cane).....	234.38	305.80	71.42	.25	.09	.16	1,534.34	2,389.06	854.72	.27	.09	.18
Hoes and shovels (plant cane).....	417.73	343.88	73.85	.44	.10	.34	3,927.34	2,378.90	1,548.44	.70	.09	.61
Plows and cultivators (stubble).....	324.65	330.97	6.32	.34	.10	.24	1,706.94	2,078.28	371.34	.31	.08	.23
Hoes and shovels (stubble).....	409.01	471.90	62.89	.43	.13	.30	2,421.34	2,528.08	106.64	.43	.09	.34
Fertilizer.....	1,602.95	3,522.62	1,919.67	1.69	1.02	.67	16,372.93	29,255.52	12,882.59	2.92	1.06	1.86
Drainage machine.....							2,027.74	3,019.05	991.31	.36	.11	.25
Total.....	4,210.50	5,501.65	1,291.15	4.43	1.59	2.84	38,567.82	45,655.92	7,088.10	6.88	1.67	5.21

Laurel Grove Co. comparative statement of agricultural operations for years 1918 and 1919—Continued.

[Italic figures show decrease.]

	Enterprise plantation.		Increase or decrease.	Cost per ton.		In- crease or de- crease.	Total.		Increase or decrease.	Cost per ton.		In- crease or de- crease.
	1919	1918		1919	1918		1919	1918				
Harvesting cane crops:												
Cane cutting.....	\$1,594.05	\$3,569.52	\$1,975.47	\$1.68	\$1.03	\$0.65	\$10,839.01	\$34,213.55	\$23,374.54	\$1.93	\$1.25	\$0.68
Cane loading.....		42.75	42.75		.01	.01		94.00	94.00			
Cane trawler.....	125.60	727.43	601.83	.13	.21	.08	530.70	3,250.99	2,700.19	.17	.12	.05
Cane hauling.....	204.20	566.29	362.09	.21	.17	.04	1,395.50	6,940.13	5,544.63	.25	.25	
Total.....	1,923.85	4,935.99	3,012.14	2.02	1.42	.60	13,165.21	44,498.57	31,553.36	2.35	1.62	.73
Corn and hay crops:												
Planting and cultivating.....	1,468.24	394.32	1,073.92	1.55	.11	1.44	6,168.16	2,742.58	3,425.58	1.10	.10	1.00
Harvesting.....	299.23	229.20	70.03	.31	.07	.24	1,758.92	1,696.41	72.51	.32	.06	.26
Fertilizer.....	653.79	21.33	632.46	.72	.01	.71	3,097.71	227.61	2,870.10	.55	.01	.54
Total.....	2,451.26	644.85	1,806.41	2.58	.19	2.39	11,034.79	4,666.60	6,368.19	1.97	.17	1.80
GENERAL EXPENSES.												
Tractor.....	53.10		53.10	.06		.06	823.00		823.00	.16		.16
Feed.....	1,997.58	2,595.25	597.67	2.10	.75	1.35	14,401.61	16,875.50	2,473.89	2.59	.63	1.97
Stable expenses.....	512.88	536.56	23.68	.54	.16	.38	3,016.93	3,338.86	321.93	.54	.12	.42
Overseer's salary.....	625.00	820.00	195.00	.66	.24	.42	3,001.75	3,769.61	767.86	.53	.13	.41
Bonus.....	54.85		54.85	.06		.06	221.30		221.30	.04		.04
Bridge tender.....		255.62	255.62		.07	.07		403.12	403.12		.01	.01
Odds and yards.....	73.47		73.47	.08		.08	1,152.80	1,620.94	468.14	.20	.06	.14
Supplies.....	70.05		70.05	.07		.07	1,297.90		1,297.90	.05		.05
Wood.....	81.30		81.30	.09		.09	1,515.77		1,515.77	.27		.27
Total.....	3,468.23	4,198.43	730.20	3.66	1.22	2.44	24,831.08	26,398.03	1,566.95	4.38	.95	3.43
Total expenses.....	14,898.78	17,481.40	2,582.62	15.61	5.06	10.55	101,972.37	132,277.01	30,304.64	18.30	4.83	13.47
Net earnings.....	1,506.94	10,263.18	8,756.24	1.59	2.97	1.38		86,235.88	86,235.88		3.14	3.14
Net loss.....							4,067.77			.73		

	Laurel Grove.		Increase or decrease.	Cost per ton.		Increase or decrease.	Trial plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.
	1919	1918		1919	1918		1919	1918		1919	1918	
Acres under cultivation:												
Plant cane.	283.00	310.00	47.00				207.00	194.00	13.00			
Stubble.	310.00	390.00	80.00				258.00	315.00	57.00			
Corn, peas, and oats.	225.00	335.00	110.00				126.00	324.00	198.00			
Uncultivated land.	237.00		237.00				242.00		242.00			
Total.	1,035.00	1,035.00					833.00	833.00				
Cane produced.	3,287.00	15,115.00	11,828.00				1,367.00	8,841.00	7,474.00			
Average per acre.	3.18	15.00	11.82				1.64	11.00	9.36			
Average receipts per ton.				\$3.07	\$3.07	\$9.37				\$17.74	\$7.77	\$9.97
Average expenses per ton.				15.68	4.62	11.06				26.05	5.07	20.98
Average net earnings per ton.				1.76	3.45	1.69					2.70	\$7.70
Average net loss per ton.												8.51
Average receipts per acre.				55.39	117.86	62.47				8.51		63.49
Average expenses per acre.				49.79	67.56	17.77				29.12	52.54	53.42
Average net earnings per acre.				5.60	50.30	44.70				42.75	13.87	11.15
Average net loss per acre.										15.63	28.67	88.67

Laurel Grove Co. comparative statement of agricultural operations for years 1918 and 1919—Continued.

	Enterprise plantation.		Increase or decrease.	Cost per ton.		Increase or decrease.	Total.		Increase or decrease.	Cost per ton.		Increase or decrease.
	1919	1918		1919	1918		1919	1918				
Acres under cultivation:												
Plant cane.....	71.00	74.00	3.00				541.00	578.00	37.00			
Stubble.....	87.00	112.00	25.00				655.00	817.00	162.00			
Corn, peas, and oats.....	107.00	79.00	28.00				458.00	738.00	280.00			
Uncultivated land.....							479.00		479.00			
Total.....	265.00	265.00					2,133.00	2,133.00				
Cane produced.....	950.00	3,456.00	2,506.00				5,604.00	27,412.00	21,808.00			
Average per acre.....	3.58	13.00	9.42				2.63	13.00	10.37			
Average receipts per ton.....				\$17.19	\$8.03	\$9.16				\$17.47	\$7.97	\$9.50
Average expenses per ton.....				15.61	5.06	10.55				18.20	4.83	13.37
Average net earnings per ton.....				1.59	2.97	1.58					3.14	6.14
Average net loss per ton.....										79		79
Average receipts per acre.....				61.63	104.78	43.15				45.90	102.44	56.54
Average expenses per acre.....				55.95	65.97	10.02				47.81	60.01	12.20
Average net earnings per acre.....				5.68	38.81	33.13				47.81	40.43	40.15
Average net loss per acre.....										1.60		1.60

INVESTIGATION RELATING TO PRICE OF LOUISIANA SUGAR. 269

Rose Hill Co., comparative statement of agricultural operations for the years 1918 and 1919.

[Italic figures show decrease.]

	Rose Hill.		Increase or decrease.	Cost.		In-crease or de-crease.
	1919	1918		1919	1918	
EARNINGS.						
Cane sent to factory.....	\$16,650.24	\$27,007.12	\$10,356.88	\$17.00	\$8.00	\$9.00
Corn and hay crops.....	1,270.00	5,325.00	4,055.00	1.30	1.58	.88
Total.....	17,920.24	32,332.12	15,411.88	18.30	9.58	8.72
EXPENSES.						
Roads and bridges.....	277.65	183.54	94.11	.28	.05	.23
Ditches and ditch banks.....	1,135.90	288.70	847.20	1.16	.09	1.07
Repairs of buildings.....	484.04	4,122.88	3,638.84	.50	1.22	.72
Implements and gear.....	2,139.61	3,460.40	1,320.79	2.20	1.03	1.17
Total.....	4,037.20	8,055.52	4,018.32	4.14	2.39	1.75
AGRICULTURAL OPERATIONS.						
Planting and cultivating:						
Fall planting.....	3,310.85	291.39	3,019.46	1.34	.09	1.25
Spring planting.....	1,256.50	371.65	884.85	1.27	.11	1.16
Plows and cultivator (plant cane).....	449.45	508.33	58.88	.43	.15	.28
Hoes and shovels (plant cane).....	1,572.13	624.00	948.13	1.61	.19	1.42
Plows and cultivators (stubble).....	590.67	711.43	120.76	.60	.21	.39
Hoes and shovels (stubble).....	782.92	673.34	109.58	.80	.20	.60
Fertilizer.....	2,089.87	10,131.85	8,041.98	2.14	3.00	.86
Plant cane.....	130.00	81.17	48.83	.14	.02	.12
Total.....	8,182.39	13,393.16	5,210.77	8.35	3.97	4.38
Harvesting cane crop:						
Cane cutting.....	1,484.89	.....	1,484.89	1.52	.....	1.52
Cane loading.....	466.65	.....	466.65	.47	.....	.47
Total.....	1,951.54	8,316.86	6,365.32	1.99	2.46	.47
Corn and hay crops:						
Planting and cultivating.....	1,438.50	911.12	527.38	1.46	.18	1.46
Harvesting.....	559.05	1,076.95	517.90	.58	.21	.58
Fertilizer.....	2,214.61	.....	2,214.61	2.26	.....	2.26
Total.....	4,212.16	1,988.07	2,224.09	4.30	.39	3.91
GENERAL EXPENSES.						
Feed.....	6,735.40	6,832.87	97.47	6.88	1.32	5.56
Stable expenses.....	980.60	1,227.97	247.37	1.00	.24	.76
Overseer's salary.....	1,224.76	1,350.03	125.27	1.25	.26	.99
Odds and yards.....	169.93	854.40	684.47	.17	.17	.....
Clearing new lands.....	.....	152.40	152.40	.....	.03	.03
Total.....	9,110.69	10,417.67	1,306.98	9.30	2.02	7.28
Total expenses.....	27,493.98	42,171.28	14,677.30	28.08	12.49	15.59
Net loss.....	9,673.74	9,839.16	265.42	9.78	2.91	.....

	Rose Hill.		Increase or decrease.	Cost.		Increase or decrease.
	1919	1918		1919	1918	
Acres under cultivation:						
Plant cane.....	110.00	177.00	67.00	.....	.....	.....
Stubble.....	177.00	147.00	30.00	.....	.....	.....
Corn and peas.....	244.00	207.00	37.00	.....	.....	.....
Total.....	531.00	531.00	.....	.....	.....	.....
Cane produced (tons).....	979.00	3,376.00	2,397.00	.....	.....	.....
Average per acre of total in cultivation (tons).....	1.86	6.36	4.50	.....	.....	.....
Average receipts per ton.....	.....	.....	.....	\$18.30	\$9.58	\$8.72
Average expenses per ton.....	.....	.....	.....	28.08	12.49	15.59
Average net loss per ton.....	.....	.....	.....	9.78	2.91	6.87
Average receipts per acre.....	.....	.....	.....	33.75	60.88	27.13
Average expenses per acre.....	.....	.....	.....	51.78	79.42	27.64
Average net loss per acre.....	.....	.....	.....	18.03	18.53	.....

Mr. SUMNERS. I would like to know how you came out with the operation there?

Mr. CHAFFE. In view of the miserableness and poorness of the crop last year, my maintenance and repair items are not what they would have been, as I had to neglect the maintenance lest I come out too far behind.

Mr. HUSTED. What allowance do you customarily make for maintenance?

Mr. CHAFFE. We usually, when we have a prosperous season, are very liberal in our maintenance expenditures, but when the season is poor we are a little bit niggardly.

Mr. HUSTED. Then in good years you make up your allowance for the lean years so that it works out about equally?

Mr. CHAFFE. Yes, sir. With Mr. Wadsworth's permission—he is president of all these companies and owner of practically the largest interest in them—I will read a report made by me to the president and board of directors, as follows:

NEW ORLEANS, March 6, 1920.

To the president and board of directors of Parish Lands Co., Rose Hill Co. (Inc.), Laurel Grove Co., and Longview Sugar Co.:

GENTLEMEN: I herewith submit the auditor's statements and the annual reports of operations of the Parish Lands Co. and subsidiary plantation-operating companies for the fiscal year ending January 31, 1920, covering the crops of 1919, the poorest crops in all my experience covering more than 30 years as a general manager of sugar plantations. For details I call your attention to "Analysis and comparison of the operations of crops of 1918 and 1919," arranged in parallel columns for convenience of reference to all items.

The weather and climatic conditions throughout the year were the worst I've ever known. Rains so frequent as to keep the land almost constantly too wet to admit of plowing or other cultivation and forced the abandonment and leaving entirely uncultivated 23 per cent of the area usually cultivated on the Laurel Grove group of plantations, and as much on Longview that we had intended to put into cultivation.

Wet weather in the fall of 1918 made it impossible to prepare the land and plant the usual proportion of fall-plant cane, continued bad weather in the spring delayed spring planting and caused a very large portion of the seed cane to spoil and become worthless and as a result, most of our plant cane was a very poor stand, and the enforced neglect of stubble, because of wet weather, made much of that defective in stand and condition.

The yield of cane per acre cultivated also testifies to the miserableness of conditions—15 tons per acre for Laurel Grove group, crop of 1918, and 3.18 tons per acre for 1919—while Rose Hill group, 1919, average yield per acre cultivated, was only 1.64 tons of cane.

On Longview—thanks to two spells of good weather on that plantation, 2 weeks in May and 12 days in July—we made 56 per cent of a normal crop, or 8 tons per acre cultivated in cane. However, on Longview we lost outright, too rotten to plant, seed cane sufficient to plant 50 acres, equal to 30 per cent of the area we had expected to plant in cane for 1919.

The same condition that affected our own agricultural operations affected in like measure the crops of each neighborhood, which is reflected by the number of tons received and handled at each of our factories where there was cane enough to justify operation:

Laurel Grove crop, 1918, 59,436 tons; 1919, 16,228 tons.

Longview crop, 1918, 35,049 tons; 1919, 15,429 tons.

At Rose Hill, where we ground 34,456 tons in 1918, there was not enough cane in sight to justify operating the factory, so we sold the crop as cane to a neighboring factory, who reported to us that the total cane received that would have gone to our factory was less than 11,000 tons.

The combined results of the year's operations of the three subsidiary companies show a profit of \$3,460.74, as compensation for rent of property and risk of advance expenses incurred on all three of \$390,000 up to the beginning of harvest of the crop of 1919 on October 31.

Had it not been recognized by the Food Administration that this crop was a failure and that to avoid a calamity that would bankrupt a great many sugar planters and practically destroy the industry in Louisiana, our very small gain would have been a stupednous loss. The only thing that saved the situation for us, and many others, was the price the Government permitted us to sell our sugar for.

Respectfully submitted.

JOE B. CHAFFE, *General Manager*.

Mr. HUSTED. In making up that report did you use the same cost system and have you included all the items, and no more items, than you had included in your previous statement?

Mr. CHAFFE. I used the same system of accounting with such minor differences and elaborations as recommended by the certified accountants from year to year since 1898.

Mr. HUSTED. But you have not included any costs or interest not included in your previous statement?

Mr. CHAFFE. No, sir; but there may be a little difference such as would be brought about by the allocation of the accounts, but it is all in there.

Mr. SUMNERS. What does your total earnings on all your properties amount to?

Mr. CHAFFE. That is different—it is in red—I am sorry to say. When you take in the overhead and make up the income statement, it shows the result of my year's operations and shows a loss of \$21,869.18.

Mr. HUSTED. And you did not pay income tax on the operation of these properties?

Mr. CHAFFE. No, sir; because under the ruling of the Internal-Revenue Department you must file a combined return, and the loss incurred at Rose Hill, where we lost \$59,000 on the year's operations, offsets the earnings at the other two places.

Mr. SUMNERS. I want to get a few of these figures in regular order. Your total loss was how much?

Mr. CHAFFE. On all of the companies, \$21,869.18.

Mr. SUMNERS. That includes overhead?

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. And the upkeep?

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. How much do you estimate the upkeep was; that is, the money expended on the upkeep last year, was it less than the average expenditure for that purpose?

Mr. CHAFFE. We probably spent last year about 3 per cent.

Mr. SUMNERS. How much in dollars?

Mr. CHAFFE. About \$20,000.

Mr. SUMNERS. You had a loss of some twenty-one thousand eight hundred, and then did you estimate the amount of money spent for upkeep as loss in addition to the normal amount because of abandoned operations?

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. In this figure of \$21,869.18 did you credit yourself with any interest on the investment, or anything of that sort?

Mr. CHAFFE. No, sir.

Mr. SUMNERS. How much is your property worth, would you say?

Mr. CHAFFE. Our unencumbered property valuation, not an inflated valuation, but just the valuation we carry them at, is \$1,156,945. We could not replace these factories at much less than 100 per cent of the

valuation we carry them at because eight years ago it was estimated that you could not build a sugar factory for less than \$300 per ton of daily capacity, and to-day it is \$700 per ton of daily capacity.

Mr. BOIES. This loss that you figure, does that include the 8 per cent the Government allows you to deduct on your investment?

Mr. CHAFFE. Yes, sir; that includes all deductions permitted under the income tax. I have brought along a copy of my income tax return to take these figures from. I did not have very much time to prepare any figures, so brought along my original papers with me.

Mr. SUMNERS. You say that this estimate of twenty-one thousand loss is in addition to the 8 per cent on the investment?

Mr. CHAFFE. No, sir; it is the gross income less the deductions permitted.

Mr. SUMNERS. You are talking about income and I am speaking about earnings.

Mr. CHAFFE. That is earnings, because I must furnish the Government as nearly a correct statement of my business as can be made.

Mr. BOIES. Do I understand that in making up your income-tax return you included the 8 per cent on your investment?

Mr. CHAFFE. You do if you earn any money, but you can not deduct from a loss.

Mr. BOIES. What I want to know is whether that 8 per cent was included in this twenty-one thousand loss?

Mr. CHAFFE. The deductions here do not carry that as I see it.

Mr. BOIES. Suppose that your income return shows the loss and that you had figured 8 per cent in it?

Mr. CHAFFE. No, sir; I did not.

Mr. SUMNERS. How are these several plantations you have mentioned situated in regard to the general sugar district of Louisiana?

Mr. CHAFFE. One is on the river, one is on the Bayou Lafourche to the east.

Mr. SUMNERS. You mean east of the sugar belt?

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. How much farther east does the sugar belt extend?

Mr. CHAFFE. Almost to New Orleans, about 40 miles.

Mr. SUMNERS. Speaking generally, is the condition at that plantation different from the conditions in the eastern section of the sugar belt?

Mr. CHAFFE. I can only answer that from crop conditions as stated in my letter. We had 2 weeks of good weather in May and about 12 days in July. The next plantation is Bayou Lafourche, probably 20 miles, as the bird flies, from the Longview location where they did not have any good weather to catch up with. One of the most northerly of our plantations was at Addis, in East Baton Rouge Parish, about 40 miles north of the Longview place, and there they had better seasonal conditions than at Laurel Grove and made very much the same sort of crop as at Longview; also, the lands are better. The Rose Hill Plantation at the extreme western part in Vermilion Parish and Mr. Denas to the contrary notwithstanding, that was the poorest crop we had. I think he gave Vermilion at 68 per cent. I did not get 28 per cent.

Mr. SUMNERS. What are the general dimensions of the sugar belt?

Mr. CHAFFE. About 80 by 120 miles, probably; but you know that would be to block out a parallelogram and you would have to cut out a great deal for swamps—cypress swamps—also, there is a great deal of rice planted there. It is 150 miles from Rose Hill Plantation to New Orleans, and the closest way we can go over to Longview Plantation from Rose Hill we have to travel at least 200 miles.

Mr. HUSTED. Did your companies make money a year ago?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. Do you remember how much?

Mr. CHAFFE. I do not remember exactly.

Mr. HUSTED. Was it a small or a large amount?

Mr. CHAFFE. A reasonable amount, but not as much as we made the year before on the \$6.35 price. While it looked at first as if we were going to make money, on account of the wet weather we did not do so.

Mr. HUSTED. What was your salary account for the year; that is, your administration expense?

Mr. CHAFFE. Rose Hill, \$7,779.20 and \$3,045.83, a total of \$10,825.03 at that point; Longview, \$16,000; Laurel Grove, \$25,110; and Parish Lands Co., \$24,000; a total of \$75,935.03.

Mr. HUSTED. Did you pay any dividends within the last year?

Mr. CHAFFE. No, sir.

Mr. HUSTED. Within the last two years?

Mr. CHAFFE. No, sir.

Mr. HUSTED. When was the last paid?

Mr. CHAFFE. In 1915.

Mr. HUSTED. You have not earned any money since that time?

Mr. CHAFFE. Not enough to justify any dividends since 1915.

Mr. TINKHAM. I want to get if I can, the increase in cost, including the plantation costs and the factory costs, between last year and this year. All I want is your opinion as to whether it is 100 per cent this year over last year. Will you for the record figure this out in detail and give it to the stenographer for insertion in the record?

Mr. CHAFFE. That is already in the statement which I have put in the record.

Mr. TINKHAM. Is that worked out so that we can tell the difference in the cost of the production of the cane and the cost of manufacturing the sugar?

Mr. CHAFFE. No, sir; you would have to work that out yourself from the statement.

(The committee thereupon adjourned until 10.30 a. m., Saturday, May 1, 1920.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, May 1, 1920.

The subcommittee met at 10.30 o'clock a. m., Hon. James W. Husted (chairman) presiding.

Mr. HUSTED. Mr. Tinkham, you said you would like to ask the United States attorney a few questions?

Mr. TINKHAM. Yes; there are a few questions I would like to ask, Mr. Chairman.

FURTHER TESTIMONY OF MR. HENRY MOONEY—Recalled.

Mr. TINKHAM. Mr. Mooney, Mr. Palmer testified as follows:

Now, Mr. Chairman, what does all that amount to? It amounts to this, that there having been no fair price committee appointed in the State of Louisiana, because of Mr. (now governor) Parker's resignation, and the United States attorney having been directed therefore, as in all other cases, to associate with himself volunteer advisors drawn from the ranks of those who usually contributed to the membership of fair price committees, when this question arose, he advised with representatives of the producers, representatives of the consumers, and the general public.

I want to know whether you had a committee of that character in any way organized with whom to consult?

Mr. MOONEY. There was no organized committee at that time.

Mr. TINKHAM. For purposes of prosecutions under this act in any other direction than looking toward possible prosecutions in relation to sugar sales, was there any consultation with people individually or in an organized way?

Mr. MOONEY. This was the first matter that would have been handled by such a body, if we had had one, and we did not organize a fair price committee down there until later.

Mr. TINKHAM. In the telegram of November 8, the Attorney General advised you to get an agreement in writing. Did you receive subsequent instructions from him not to do so?

Mr. MOONEY. No, sir.

Mr. TINKHAM. Did you get an agreement in writing?

Mr. MOONEY. The only documents which we had and which I thought in substance complied with his request and met his ideas, as I understood his views at that time, was a copy of the resolution, a certified copy of the resolution, adopted at the Planters' meeting. That, I thought plus the telegram I sent to the Attorney General and his reply to me, furnished a very good written memorandum of what had occurred.

Mr. TINKHAM. When was that vote passed by the Planters' committee; on what date?

Mr. MOONEY. November 8.

Mr. HUSTED. Was every plantation in Louisiana represented by its committee of planters with whom you negotiated?

Mr. MOONEY. No, sir. The committee was formed of one manufacturer and one cane grower, who did not manufacture, from each parish in the sugar district and five members selected from the sugar exchange.

Mr. HUSTED. I think you testified to that?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. The members of this committee, however, represented other interests than their own individual interests, did they not? Did they speak only for themselves or did they speak for the producers, manufacturers and refiners of sugar generally in the State?

Mr. MOONEY. Speaking of that committee, I should have said that from its organization they spoke rather more for themselves. That was not the fair price committee or a fair price committee as we understand it.

Mr. HUSTED. No; I understand that. But the situation, as I certainly all along have understood it to be, was about this, that you met with a committee representing the planters of the State?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And representing the producers of the State?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Now, did they actually represent them or not? Were they selected by the planters and producers of the State to represent them there?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. And to confer with you?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. Then when they spoke, they spoke not only in an individual but in a representative capacity?

Mr. MOONEY. I think that would be the fair understanding of their position at that time. I understood it that way.

Mr. HUSTED. That is the way I have understood it right along.

Mr. MOONEY. I understood it that way.

Mr. HUSTED. But you said at the beginning of my questioning to-day that the planters generally and producers generally were not represented at that conference.

Mr. MOONEY. I misunderstood the chair's question. I thought you said whether they represented other interests. If you mean other like interests, I can answer that by saying yes, I understood they did. But I misunderstood the question and thought you included other interests than the sugar interests.

Mr. HUSTED. Was the entire sugar interest of Louisiana represented at this conference at which the 17 and 18 cent price was agreed upon, or were there any people who were outside and were not represented and would not be bound by any action taken?

Mr. MOONEY. It would be rather hard to answer that question. Practically speaking, I thought the sugar interest was represented by that committee. Mr. Dickinson stated here yesterday that he, although present at that committee meeting, was never bound by it because he got up and left. And of course there were others not bound by the action of that committee. But it was a very representative committee, and the best way perhaps to judge by their weight is by the result, which is that the sugar planters throughout the State did abide by the action of the committee.

Mr. HUSTED. As far as you know, have there been any sales, subsequently to the date of the agreement, by anybody in Louisiana in excess of 17 and 18 cents for these two grades of sugar?

Mr. MOONEY. No, sir. Just to explain that, too: as a matter of fact, immediately after I had determined that any one selling sugar at that price, under all the facts presented to me, could not be successfully prosecuted for a violation of the Lever Act, the prices named were posted by the Sugar Exchange in their quotations and adhered to rigidly throughout the season and all sales were made at those prices.

Mr. HUSTED. The entire crop, as I understand it, was marketed at those prices; nothing was sold above?

Mr. MOONEY. No, sir.

Mr. HUSTED. And nothing was sold below?

Mr. MOONEY. No, sir. I mean practically the entire crop was sold at those figures.

Mr. HUSTED. Except a small amount which was sold and marketed prior to the agreement?

Mr. MOONEY. There would be two exceptions to that statement, Mr. Chairman. The first is the exception which you have just made—

Mr. HUSTED. And some sales for future delivery?

Mr. MOONEY. No, sir; but there were some seconds. It was explained to the committee yesterday that all the sugar produced by the cane can not be taken from the cane at one and the same time, and I believe about 80 pounds to the ton is the first sugar. That was all sold, practically, at the price mentioned. The seconds sold at various prices. Mr. Chaffe, I think, testified yesterday to around 12 cents for some of his seconds.

Mr. TINKHAM. Now I want, Mr. Chairman, to develop a little bit more the facts in relation to the planters and the manufacturers' organizations. Was there one organization representing planters?

Mr. MOONEY. Yes, sir; what is known as the American Cane Growers' Association. I am not a member of that association, of course, and I can not tell you just who are in the organization; but it is a very representative body. It is not a capitalized body.

Mr. TINKHAM. A voluntary association?

Mr. MOONEY. Yes, sir.

Mr. TINKHAM. Do you know whether they passed a formal vote authorizing anyone to represent them when they had the interview with you?

Mr. MOONEY. I do not believe they did.

Mr. TINKHAM. You do not believe they did?

Mr. MOONEY. I do not believe they did. I am not sure, Mr. Tinkham, because I am not a member of the association.

Mr. TINKHAM. No; I understand. Now the manufacturers have an organization, too?

Mr. MOONEY. No; the one I speak of is the same organization.

Mr. TINKHAM. The same. That is, that organization represents both the manufacturers and the producers?

Mr. MOONEY. I think so.

Mr. TINKHAM. And there is no other organization?

Mr. MOONEY. That is my understanding; yes.

Mr. CHAFFE. There is no other organization of planters.

Mr. MOONEY. I was not certain about that and I accept the correction. Mr. Chaffe is here and he says there is no other organization of planters.

Mr. TINKHAM. Do you know whether they took a formal vote authorizing anyone to make agreements with you or make representations to you?

Mr. MOONEY. I do not.

Mr. TINKHAM. Were any cost statements, costs of manufacture, submitted to you?

Mr. MOONEY. As I stated yesterday, I talked, I remember, particularly with Mr. Dickinson, who has testified before this committee, and with Mr. Chaffe, who was the last witness on the stand; but, in the main, I relied upon the figures and the result arrived at by the equalization board in the figures submitted by the planters the year before.

Mr. TINKHAM. So that there were only two men who submitted cost sheets to you?

Mr. MOONEY. Well, I did not really—of course, I would not have had time to examine the cost sheets of all of them and it would have required an auditor to have done that intelligently. I got a very good idea of the costs from my talks with Mr. Chaffe and Mr. Dickinson, using as a basis the fact that cost sheets had been submitted to the equalization board in order to arrive at the price of the 1918-19 crop.

Mr. TINKHAM. What did the equalization board say the average costs had been in 1918?

Mr. MOONEY. I did not confer with the equalization board at all. As I explained to the chairman, in answer to his question, I accepted the finding of the equalization board.

Mr. TINKHAM. And their finding was what, that you accepted?

Mr. MOONEY. It was that, at 9 cents a pound for the 1918-19 crop, that price represented a very reasonable return plus the cost to the planter.

Mr. TINKHAM. But you did not have the actual costs in front of you for the 1918 crop?

Mr. MOONEY. I did not.

Mr. TINKHAM. Now, do you happen to know what the average costs were for 1918 or for this year?

Mr. MOONEY. No, sir.

Mr. TINKHAM. In talking with the two men with whom you talked in relation to costs, did they submit any signed statements, written statements, to you in relation to costs?

Mr. MOONEY. No, sir.

Mr. TINKHAM. Did you consult in any way any publications of the Agricultural Department, the Commerce Department, or the Tariff Commission?

Mr. MOONEY. I did.

Mr. TINKHAM. Before you advised the Attorney General?

Mr. MOONEY. I did.

Mr. TINKHAM. And do you remember whether you consulted this report of the Tariff Commission, "Tariff Commission, series No. 9," entitled "Costs of production in the sugar industry?"

Mr. MOONEY. I could not say whether I did or not. My recollection is that I did. My attention was brought to that publication. That has been some time ago, but I remember that. I was seeking all the light I could get on the subject.

Mr. TINKHAM. I would like your opinion of whether this method could have been followed or not in arriving at what you were attempting to arrive at, namely, preventing sugar being sold at an unreasonable and profiteering price.

(This statement is made in this report from the Tariff Commission, and is as follows:)

During the present year (1918) it became a matter of importance to estimate the cost of production of the current sugar crop with a view to fixing the prices for next year. It was desirable to base the price upon the cost of producing sugar, yet this must be done before those costs had been incurred. The problem was, therefore, to compute provisionally costs from prices actually incurred or anticipated. With a view to securing data for solving this problem the commission sent to all factories schedules on which were to be entered for the years 1913-14, 1916-17, 1917-18, 1918-19, the rates of wages, the rates of freight to the principal market, and the prices of important materials contributing to the total cost of producing sugar, and for the years 1916-17 and 1917-18 the total output of sugar, together with the total expenditures made by the factory for each of the above items. From the information so derived

it became possible to compute the cost per ton of sugar produced for each of the above items for the year 1917-18, and then, assuming that such costs would vary directly with the prices, the probable cost per ton of sugar produced for each of them for the year 1918-19, and finally, by adding the results of the previous steps together, to estimate the total cost per ton of producing sugar in that year.

Mr. MOONEY. It could not at that time have been done for the reason that the Louisiana crop was being manufactured. The factories were just starting and it was impossible to secure the data from the sources named in that document at that time in order to be of any assistance in solving the problem that was before us.

Mr. HUSTED. You stated, Mr. Mooney, you consulted the publications of the departments of the Government. Would you be good enough to state, so far as you can remember, any publications you did consult on the cost of production or in relation to the sugar question?

Mr. MOONEY. Yes, sir. I think at the time that that very document which the gentleman has read from was one of those that I consulted.

Mr. HUSTED. By what department was that document published?

Mr. MOONEY. That was the Tariff Commission, was it not?

Mr. TINKHAM. This is the Tariff Commission's report.

Mr. HUSTED. And will you state the publications of the other departments that you consulted?

Mr. MOONEY. Mr. Chairman, I was more influenced at that time by the crop condition reports than any other matter. In other words, I felt that the Sugar Equalization Board had determined the basic proposition for me as far as was necessary and that the main question for me to decide was the accuracy of the reports of our estimate as to the crop condition.

Mr. HUSTED. That is all. Is there any further question?

Mr. TINKHAM. Yes; I want to ask two questions here. They are of some importance, Mr. Chairman. In your telegram of November 5 you state:

This afternoon I held a conference with the three largest consumers here, and they took the position that the planters' demands are excessive. They also claimed that by the action of the equalization board they are virtually compelled to buy their sugar from the Louisiana producer; that threatened prosecutions really afford them no relief, so far as their business is concerned, and that they are at the mercy of the Louisiana sugar producer.

Now, will you tell the committee who those three largest consumers were?

Mr. MOONEY. Yes, sir; I did mention them in my testimony yesterday.

Mr. TINKHAM. Will you connect it up with this telegram, please?

Mr. MOONEY. Mr. Penick, whose letter is on file in the record; Mr. Powell, of the New Orleans Coffee Co.; and Mr. Brown, I think it is, of the Dunbar Sirup Co.

Mr. TINKHAM. What did they claim?

Mr. MOONEY. They claimed, as before stated in my letters which are filed in this hearing, that they believed that the crop condition reports were over pessimistic as presented by the planters and that the crop condition was not as bad as the planters would have me believe.

Mr. TINKHAM. Now, you state again in the same telegram of November 5, directed to the Attorney General:

In conclusion, my investigation satisfied me that at 15 cents some of the producers would be making a good profit, and at 17 cents the same producers would be making a very large profit, but that there are a great number of planters in Louisiana who will make nothing, even if a maximum price for yellow clarified is fixed at 17 cents.

I want to ask you, if at 17 cents the producers would make very large profits, whether that action of yours in fixing 17 and 18 cents as the maximum would not tend to allow certain producers to do exactly what the law in spirit and in words forbade namely, the making of an excessive profit?

Mr. MOONEY. The term producers used in that letter was used in a very broad sense and the testimony before this committee was in line with the information which I had at that time, that there were so-called garden spots in which the cane had been blessed without rain in some instances and with rain in others. But the people I had in mind were really the cane growers. I do not believe there was a factory in the State of Louisiana, a large factory, which at that time stood to make any large profit at 17 cents and I did not consider the cane grower amenable to the law.

Mr. TINKHAM. According to your own statement, there would be some who would make, under that, very large profits?

Mr. MOONEY. Yes, sir. But subsequent facts developed that they did not. I thought that some of the cane growers would have a very good fruitful year at that price.

Mr. TINKHAM. May I suggest this: Would it not have been better, as the Lever Act did not apply to agricultural products as such, for you not to have attempted to enforce the Lever Act, because it was unenforceable against the producers of agricultural products, and then have set a margin of profit for the manufacturer?

Mr. HUSTED. Now, these questions are really going over ground that the committee has been over already.

Mr. TINKHAM. Strike that out, please.

Mr. SUMNERS. Personally, I would like to have him answer that question.

Mr. MOONEY. My answer to that was of course I ask the committee to bear in mind that my information then was in line with the testimony heard by this committee and that the price of cane to the factory was predicated upon the market price of sugar in the New Orleans market and that unless the cane grower was included in our construction, we could not hope to hold down the price of sugar, which was the ultimate aim.

Mr. SUMNERS. Why could you not do it?

Mr. MOONEY. Because if the market price—the contracts existing between the growers of cane with the various factories predicated the price for the sale of cane to the factory—

Mr. SUMNERS. What kind of contracts? Please be a little more specific.

Mr. MOONEY. They were all written contracts, by which the cane growers who do not manufacture sugar but sell their cane to the factories—those contracts specified the basic price per ton of cane to be the quotation price of sugar in the New Orleans market at the time the cane was harvested.

Mr. CLASSON. When were those contracts made?

Mr. MOONEY. They are made earlier in the season. These gentlemen who are familiar with that, I would prefer to have testify to that. Mr. Chaffe is going to take the stand.

Mr. CLASSON. Are they written contracts?

Mr. MOONEY. Yes, sir, I understand they are written contracts.

Mr. SUMNERS. I want you to put one in the record at this point. Now let me see; is this the situation: The testimony is that there are about 10,000 cane growers, or something like that?

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. And there are one hundred and sixty-odd plants?

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. Now your testimony is that these individual cane growers, prior to the time of harvesting and prior to the time of this conference, had contracts with the mills for the sale of their cane and that, under those contracts, they were entitled to receive on the basis of 100 pounds of sugar per ton of cane, to be paid for according to the quotations for sugar in the open market, quoted on the Louisiana exchange?

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. Now, then, was it your construction of that contract and the law that these individual cane growers, despite the Lever Act, could turn their sugar into the mill and if the open market was 20 cents, they would be entitled to \$20 a ton on their cane and then that the manufacturer, when he came to sell, would have \$20 sugar as the basis and could add to that the manufacturing cost and, therefore, you could not reach, under the Lever Act, by any sort of a method, the sugar that came from the cane of the individual farmer who sold his cane to the manufacturer? Was that your construction?

Mr. MOONEY. Absolutely; that was the fact and those were the conditions.

Mr. HUSTED. That would be true, of course, in every case, and the price that the producer got for his cane as a farmer would be controlled by the law of supply and demand.

Mr. MOONEY. Yes.

Mr. HUSTED. And your margin, if you allowed a margin over and above the cost of production, would apply in just exactly the same way as the margin which you allowed the retailer to charge for sugar over and above what he paid for it.

Mr. SUMNERS. Now, then, according to your judgment, as you faced the situation at that conference, as you look at it now, you believe that this action of yours did succeed in preventing this independent sugar running wild on the market?

Mr. MOONEY. I can not have any doubt but what it had that effect.

Mr. SUMNERS. Now, then, you made a statement a while ago in reply to the gentleman from Massachusetts (Mr. Tinkham) that, at the time you came to fix this price, you determined that the price of 17 cents was, under all the circumstances, in your judgment, a price that if the sugar was sold at and below, you could not sustain a conviction? That was your judgment?

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. Then you stated later on that you fixed this price upon—you were governed in the fixing of this price by the determination in the year before of the Sugar Equalization Board, which was 9 cents. Now, it would very much clarify the record if you would put together, in one answer, just why you determined that; because you did not fix a 9-cent price.

Mr. HUSTED. If you will permit me, the witness has already explained that.

Mr. SUMNERS. I would like to have him put it in one answer, right together, so that we won't have to search through the record.

Mr. MOONEY. The Sugar Equalization Board has, as the gentleman from the committee states, fixed the basis for our calculations on this situation, and in a hearing before the Senate Agricultural Committee, just three weeks before, it had been sworn to, by those in a position to know, that the Louisiana crop would have to bring twice as much as it did the year before in order to let them out.

Mr. SUMNERS. That was because of the low yield and the increased expense in production?

Mr. MOONEY. Yes, sir.

Mr. SUMNERS. I believe it is testified here that the yield the year before, where the price was 9 cents, was 218,000—

Mr. MOONEY. Two hundred and eighty thousand.

Mr. SUMNERS. Two hundred and eighty thousand tons; and, in the year with regard to which we are making inquiry, something like 120,000?

Mr. MOONEY. One hundred and twenty-one thousand.

Mr. SUMNERS. Now there is testimony scattered through the record with reference to the Equalization Board and the absence of an equalization board and a fixed price and a good many various statements with regard to your determination when you met that committee. I would like, for the sake of getting the record condensed and clarified, if you could, in a very brief statement, explain and connect your statement up with reference to why this announcement was made and why this price of 17 cents was announced.

Mr. MOONEY. Yes, sir. Well, as has been testified to in this examination this morning, the equalization board had determined the cost of the crop for the preceding year and had also determined that at 9 cents, theoretically—because actually it did not pay out as well as that—theoretically, the planter would receive a fair return on his investment. It was admitted by the Government reports and by the sworn testimony before the Senate committee that this crop was, at best, a 50 per cent crop and, therefore, would make the cost per ton of sugar double the cost of the preceding year. In fact, Mr. Zabriskie's testimony, to which I referred yesterday, stated that the crop was proportionally more expensively made this year than the preceding year. So much for the price.

Then the question that was put to me was whether or not the planters of Louisiana ought to be prosecuted for selling sugar at above a then suggested price of 15 cents, or something of that sort. I went into the question primarily to determine what price would be a fair price. In other words, if they sold beyond a certain price, would I be justified in asking a conviction on the facts as I understood them. And with this primarily in view, I interviewed the gentlemen of whom I have spoken, I consulted the sources of information to which I have referred, and I reached the conclusion that

if I undertook to prosecute a producer in Louisiana for selling sugar for 17 cents, I could not hope for a conviction and, therefore, I would not be justified in starting the prosecution.

Now we had no fair-price commissioner, as the Attorney General has stated, in the State of Louisiana. The Louisiana planters were trying to live within the law; they wanted to; they wanted to conform to their ideas of good citizenship, and as there was nobody either voluntary or otherwise to name what was deemed the fair price, I did make known to them my conclusions, and that is how the agreed fair price of 17 cents for the clarified and 18 for refined was announced.

Mr. SUMNERS. That is all.

Mr. HUSTED. Will you kindly state, simply for the purposes of the record, whether the sugar ton which has been referred to in the hearings is a long or a short ton.

Mr. MOONEY. I think it is a short ton.

Mr. CHAFFE. Provided for by the statute of the State.

Mr. MOONEY. The answer was correct. A short ton I understood it was and I am correct.

Mr. HUSTED. A short ton; it is a 2,000-pound ton?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. What you have said in answer to Mr. Sumners's question is a repetition of what you have already testified to, I think; no new fact was developed?

Mr. SUMNERS. No, sir; I think not.

Mr. HUSTED. And the theory, as I understand it, upon which you proceeded in fixing the price of 17 and 18 cents was that the crop being estimated at not more than half a crop, therefore the producers should receive twice the price that they received in 1918, assuming that the 1918 price fixed by the Sugar Equalization Board allowed only a fair and reasonable profit?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. That is the theory upon which you proceeded?

Mr. MOONEY. Yes, sir.

Mr. HUSTED. That is all.

Mr. SUMNERS. Now, Mr. Chariman, Mr. Chaffe is here and there are just two little questions I want to ask him.

FURTHER TESTIMONY OF MR. JOE BRYAN CHAFFE—Recalled.

Mr. HUSTED. Before you start, Mr. Chaffe, did you leave those figures with the stenographer relating to the cane?

Mr. CHAFFE. I want to correct my testimony in that regard, Mr. Chairman, this morning. In answering yesterday that there was no difference, or that the difference would be within 15 cents of the overhead costs for Laurel Grove and the Longview Co., I overlooked the fact that the Longview Co. had ground a 50 per cent crop or 60 per cent crop and that the Laurel Grove Co. had only ground a little more than a 25 per cent crop, approximately 26½. Using the actual figures, I find that the overhead charge at Laurel Grove, instead of being \$1.28, as in the figures given you yesterday, was \$3.13, so that it changes the total figures of the cost of manufacturing at Laurel Grove from \$4.71 to \$6.56. The Longview figures were exact according to the auditor's report, \$4.37.

Mr. HUSTED. That correction will be noted, sir, in the record.

Mr. CHAFFE. Thank you, sir.

Mr. SUMNERS. I wanted to get from you, as an expert sugar man, how much of this yield of sugar per ton on the average is firsts and how much of it is seconds. There is some testimony about it, but I was not sure it was from anybody who could speak with assurance.

Mr. CHAFFE. Our best results are approximately 85 per cent first sugars and 15 per cent second sugars.

Mr. SUMNERS. What is the spread in price as between those two?

Mr. CHAFFE. The average work is about 70 per cent, 70 to 75 per cent first sugars, and 25 to 30 per cent of the low-grade sugars—seconds and thirds.

Mr. HUSTED. If you will pardon me for interrupting you: Is that seconds what is commonly known in the market as brown sugar?

Mr. CHAFFE. Yes, sir. It is spoken of as seconds because it is a second crop of crystals taken from the same solution, sir.

Mr. HUSTED. And is commonly known as brown sugar?

Mr. CHAFFE. Yes, sir.

Mr. SUMNERS. In the figures that have been given to this committee by you and by the other gentlemen whom you have heard testify here, in regard to the per pound yield per ton, does that include seconds with firsts?

Mr. CHAFFE. Yes, sir; that includes seconds and firsts. We give you our total recovery in pounds of sugar without reference to polarization or sucrose content which is determined by the polarization.

Mr. SUMNERS. Do you have any information about the yield of beet sugar per ton?

Mr. CHAFFE. In the document that the chairman quoted from yesterday, Series 9 of the Tariff Commission, on page 19 the information is given that there was recovered from 6,236,151 tons of beets, 824,866 tons of sugar. This beet sugar is all granulated sugar. Dividing the number of pounds of sugar by the number of tons of beets given, it gives us 264.54 pounds of granulated sugar per ton of beets.

Mr. HUSTED. Two hundred and sixty-four pounds?

Mr. CHAFFE. Yes, sir. The range of yield of sugars for the same years that we have in miscellaneous series 53, on page 341, for cane sugar, is given, in Beet Sugar Statistics compiled by Mr. Palmer, at from a minimum of 235.68 pounds of sugar per ton of beets to 288.55 pounds of sugar per ton of beets.

Mr. HUSTED. Have you any figures, sir, on the sugar yield per acre of land devoted to the cultivation of the sugar beet and land devoted to the cultivation of the cane?

Mr. CHAFFE. No, sir; I have not.

Mr. HUSTED. In other words would an acre of land devoted to cane-sugar production yield more or less actual sugar than an acre of land devoted to beet-sugar production?

Mr. CHAFFE. I can not answer that offhand. Our yield of cane per acre varies so widely with the seasons that it is rather difficult to name any particular figure as the average; but it would be somewhere between 12 and 15 tons of cane harvested. Now there is a difference between cane harvested and the total acreage of cane. Approximately 20 per cent of all cane grown, in acres, is retained for seed. It

figures approximately 15 per cent of the total tonnage grown on a plantation that must be retained and used to plant the next crop with. You see, it takes five tons of sugar cane to plant an acre of land. Beets are planted from seed. No sugar cane is propagated from the seed.

Mr. HUSTED. In the case of cane cultivation, you do not practice crop rotation, do you?

Mr. CHAFFE. Yes; it must be practiced.

Mr. HUSTED. You have to practice crop rotation?

Mr. CHAFFE. Because it is too exhausting on the soil.

Mr. HUSTED. What is your rotation?

Mr. CHAFFE. We plant the first year, cultivate the ratoons or stubble the next year and then that land goes into corn with peas planted between the corn rows. When we lay the corn by, as a restoration crop—

Mr. HUSTED. To put the nitrogen back in the soil?

Mr. CHAFFE. Yes, sir—most of those peas are plowed under so as not only to put nitrogen back in the soil but to add humus to the soil.

Mr. HUSTED. What do you practice, a two or three year rotation?

Mr. CHAFFE. The practice is as I have just described it, sir. Every third year it is in corn.

Mr. HUSTED. It is a three-year rotation?

Mr. CHAFFE. Yes, sir; occasionally, in very strong lands, we cultivate the stubble a second year. That would be a four-year rotation.

Mr. HUSTED. That is why I asked the question, because I understood you did not have to renew the cane every year in Louisiana.

Mr. CHAFFE. Stubble is rarely kept a second year except in an emergency. For instance, if we have an overflow we will keep everything that promises to grow a stalk of cane the following year so as to provide us with seed. It does not make any difference, or not a great deal of difference, rather, whether you plant cane 6 feet long or whether you plant cane 3 feet long. It increases the quantity in tons; but the eye or bud of each joint of cane is what we propagate from and if those eyes are good and sound it makes but little difference about the length of the stalk. If we have poor stands of plant cane, because of defective seed, we will probably keep second-year stubble to provide seed the following year, because probably the crop planted two years before that would not have been a poor stand. And you will attempt to avoid draining your lands of their fertility too much by an application of a greater quantity of fertilizer. Those are the only conditions under which we are willing to keep our lands any more than two years successively in cane.

Mr. HUSTED. In addition to practicing crop rotation and renewing the productive quality by turning under green crops, do you use commercial fertilizers to any extent?

Mr. CHAFFE. In large quantities.

Mr. HUSTED. Then the conditions existing in Louisiana—

Mr. CHAFFE. My fertilizer bill this year for the group of plantations I have discussed will run in the neighborhood of \$75,000.

Mr. HUSTED. Then the conditions in Louisiana are quite different, are they not, from what they are in Cuba?

Mr. CHAFFE. Oh, certainly.

Mr. HUSTED. I understand in Cuba they do not have to renew the cane for a number of years?

Mr. CHAFFE. There is more than one reason for that. One is that they never have freezes to kill their cane; another is that their soils are very deep.

Mr. HUSTED. Your soils in Louisiana are deep, are they not?

Mr. CHAFFE. Yes, sir. Not as deep as the Cuban soils, the new soils of Cuba.

Mr. HUSTED. Is this cane grown on alluvial soils in Louisiana?

Mr. CHAFFE. Yes, sir.

Mr. HUSTED. That is almost bottomless, is it not—almost inexhaustible?

Mr. CHAFFE. No, hardly, because you have stiff land there where it is clayey in its nature. Those lands are very expensive to cultivate, too.

Mr. HUSTED. There is nothing further I care to ask.

Mr. CLASSON. Do I understand it takes two years after you plant the cane before you get a crop?

Mr. CHAFFE. No, sir; you plant the cane and you get a crop in the same year in which you plant it. You cut that crop off in the fall and harvest it and cultivate the ratoons of stubble that is left in the land when you cut off your first crop. The following year you cultivate those ratoons and you cut a second crop from the first planting. Now, as I explained a few moments ago, under certain conditions of stress, we cultivate these ratoons or stubbles a second year, which would be three crops you would get from a single planting.

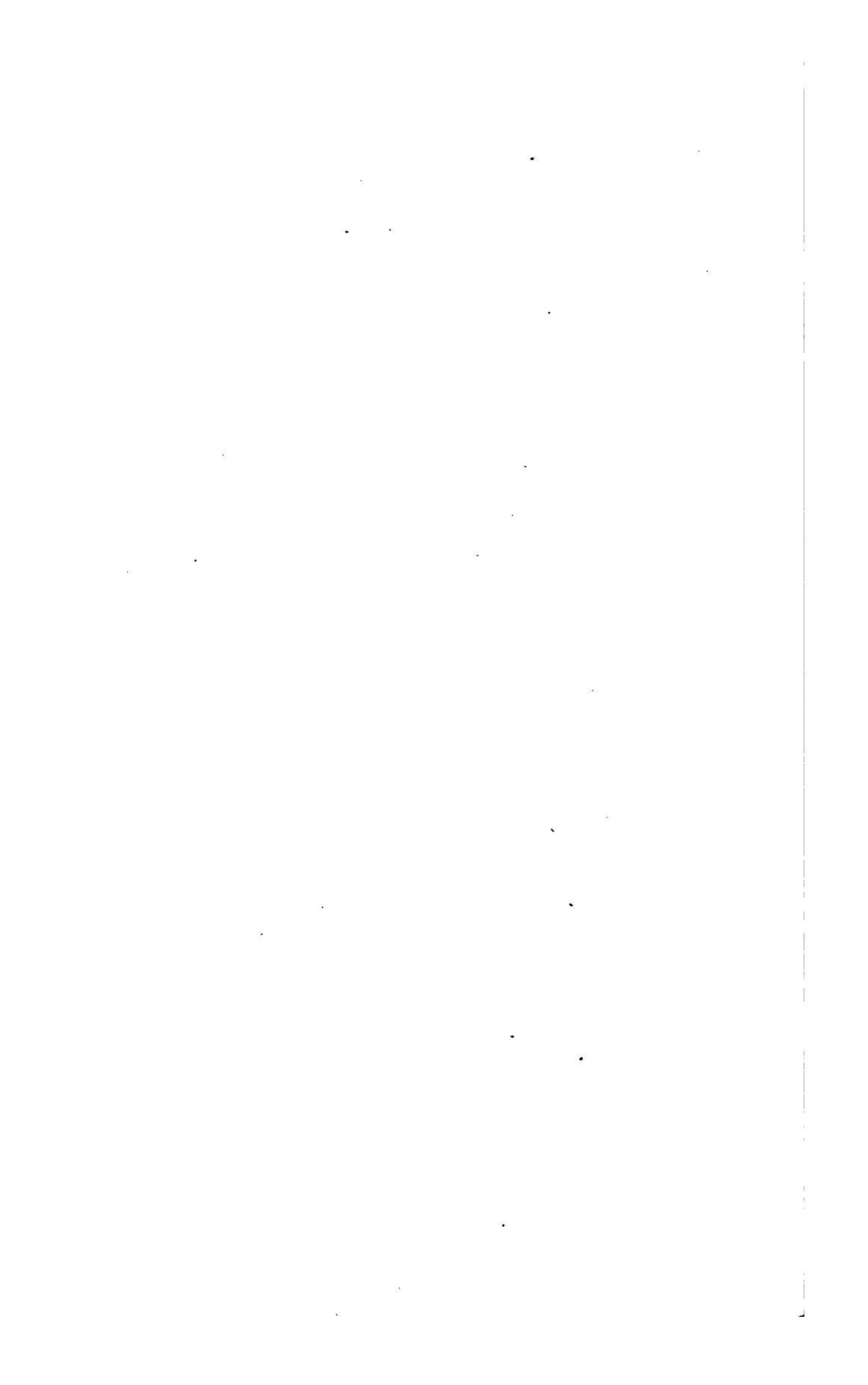
Mr. HUSTED. Under favorable conditions?

Mr. CHAFFE. Yes, sir. Now, the question was asked a few minutes ago as to what constituted a ton of cane. That is provided by an act of the legislature that it shall be 2,000 pounds. A great many years ago it was discovered that there was one factory man who was applying the 2,240-pound ton——

Mr. HUSTED. And in all your testimony here and in all the figures you have given, they are all on the basis of a 2,000-pound ton?

Mr. CHAFFE. Yes, sir; because that has been the law now for about 25 years.

(The subcommittee thereupon adjourned subject to the call of the chairman.)



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INVESTIGATION OF THE ACTION OF THE ATTORNEY GENERAL RELATING TO THE PRICE OF LOUISIANA SUGAR.

SERIAL No. 21, PART 5.

SUBCOMMITTEE OF COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., May 14, 1920.

The subcommittee assembled at 2 o'clock p. m., Hon. James W. Husted (chairman) presiding.

STATEMENT OF HON. HERBERT HOOVER, FORMERLY UNITED STATES FOOD ADMINISTRATOR.

(The witness was duly sworn, according to law, by Mr. Husted.)

Mr. HUSTED. Mr. Hoover, we are investigating the action of the Attorney General last November, regarding the sugar situation in Louisiana, particularly with reference to the fixing of the maximum price of 17 and 18 cents, for different kinds of sugar on the plantation in Louisiana, and the effect of such action on the price of the Cuban crop, if any.

We would be very glad to have your views on the subject; and on account of your great experience as head of the Food Administration of the Government, we are sure that Congress and the country would like to have you go into the matter as much in detail as possible.

Mr. HOOVER. Well, I should think it is desirable to set out what opportunity I may have had in this matter during the period in question.

I returned from Europe some time in the latter part of September, and went immediately to California, and did not return to the East until some time in the latter part of November. Therefore, during

that period, I had no particular knowledge of or connection with the matters under discussion. I had terminated my relationship to the Food Administration and the various activities on the first of July. So that I have no very intimate acquaintance with any transactions that went on during that period.

During the months of June and July I conducted a survey of the food situation generally in the world, from Paris, with a view to advising the Government here as to what action might be necessary in certain contingencies.

As a result of the investigation of the sugar prospects, I advised the sugar board and the Government as to the probable shortage of sugar in the year 1920 and the desirability of considering the extension of the Sugar Equalization Board another year with its powers and made a recommendation that the matter should be laid before Congress, as I was under the belief that an extension of war activities of that very great dimension should be a matter of congressional action and congressional consideration; and partly upon that recommendation, and partly upon its own information, the Sugar Equalization Board then took up the question of the extension of its operations through the purchase of the Cuban sugar crop and the extension of its authority. What actually took place in that matter, as to the details, I have no particular knowledge of, because I had discharged my part when I had advised everybody concerned as to the situation.

Mr. HUSTED. Have you concluded, Mr. Hoover?

Mr. HOOVER. Yes.

Mr. HUSTED. In November—I think on the 8th day of November, 1919—the Attorney General of the United States concurred in an arrangement which had been made by his United States attorney in Louisiana—made with the sugar producers' committee in Louisiana—that he would not prosecute them for profiteering under the Lever Act, if prime yellow clarified sugar on the plantation was not sold for more than 17 cents and if plantation granulated sugar was not sold for more than 18 cents.

At the time that this arrangement was made, Cuban sugar was selling below 8 cents. The first quotation that we have after this arrangement was made on Cuban sugar is 10½ cents, and I think that was in the month of December within a few weeks after this price was fixed by the Attorney General.

It is charged that the action of the Attorney General in fixing a maximum official price at which sugar could be sold in Louisiana without fear of any prosecution by him for profiteering had a direct effect in stimulating the Cuban market. That opinion was expressed by Mr. Zabriskie before this committee, who was, and is now, I believe, president of the Sugar Equalization Board.

I would like to know if you agree with Mr. Zabriskie in his opinion about that matter.

Mr. HOOVER. Yes; I would agree that it would probably have that result. It is, of course, a matter of opinion again. I would like to say this, however, that my own mind in all such transactions would work in a different channel; that I understand the Louisiana crop was short, and that there possibly or probably was some justice in a larger price to the Louisiana producer than the then current price of sugar.

But constructively, if I had been dealing with that situation—and this, again, is only one's own personal point of view—I should have

had Louisiana sugar purchased from the producers by the Sugar Board at whatever might have been a just price, and should either have taken the loss to the board, or alternatively, have sold sugar to the luxury trades at some increased price. In other words, the Sugar Board was created for the purpose of equalizing prices of sugar, and rather than to have attempted to handle these matters by legalistic means I would certainly have handled them as a business operation, because naturally I have no confidence in legalistic measures being able to control price or distribution or profiteering, or anything else; I believe the thing must be fundamentally based on a business operation.

Mr. HUSTED. And if legalistic methods had been used, in view of the widely varying conditions on the different plantations, would you have fixed a maximum price for all sugar in the State of Louisiana, or would you have fixed a margin over and above the cost of production?

Mr. HOOVER. Well, I think that is rather too difficult a question to answer, because I certainly would not have entered on that path at all.

Mr. HUSTED. You would not have entered on it at all?

Mr. HOOVER. No; not while the implement of the sugar equalization board was in operation.

Mr. HUSTED. And did the sugar equalization board at that time have full legal authority to purchase the Louisiana crop?

Mr. HOOVER. I see no reason why they should not have purchased that parcel of sugar; it was comparatively a small operation, about 125,000 tons of sugar, as against four million odd tons of annual consumption.

Mr. HUSTED. And if that action had been taken which you suggest—if that sugar had been purchased by the sugar equalization board and the loss assumed by the Government, do you think it would have had a beneficial effect in keeping down the price of sugar generally in the country?

Mr. HOOVER. Well, again, I think that is a good deal a matter of opinion. Just speaking offhand, my impression would be that it would have—that the rise in Cuban sugar would have been, perhaps, less rapid; but the present price of Cuban sugar is not particularly due to that incident; it is due to a much wider situation of a world shortage.

Mr. HUSTED. Will you explain to the committee the situation in relation to the world shortage?

Mr. HOOVER. Well, the production of sugar in the Western Hemisphere has increased steadily during the war; but the consumption has likewise increased; the consumption has, I imagine, not entirely kept pace with the production. In other words, there is probably some excess production in the Western Hemisphere for export to Europe. But Europe, of course, has had a great decrease—has suffered a great decrease in its beet-sugar production, and there has been some decrease, or, to phrase it in another way, lack of increase, in the production of cane sugars in the Eastern Hemisphere, because those sugars were isolated during the war, and during certain years they had either no market, or a market at a lessened figure, and therefore that growth of cane sugar in the Eastern Hemisphere was very considerably curtailed. So that, with the profound shortage of beet sugar in Europe, there was a natural "pull" on the Western

Hemisphere for sugar. Taking the world by and large, there is a very considerable shortage. How far that shortage will work out as against the United States is difficult to say, because no one can estimate the buying power of Europe. If the European countries were to restore their normal consumption of sugar, there would be the most profound shortage; but some of them are still rationing their people; and beyond that, the very high price, interpreted in the terms of the European currency at the present time, tends to curtail their consumption. But even at the present rate of consumption certainly there is some considerable shortage; but, as I say, it is difficult to estimate how profound that will be. It was evident from last July, when it was possible to make the first estimate of the world crop, that such a shortage would exist.

Mr. HUSTED. Do you think the present high prices are affected at all by sugar hoarding in the United States?

Mr. HOOVER. Well, the hoarding, possibly, takes place more by effect than by deliberate action of hoarding for speculative purposes. For instance, the larger manufacturers of sugar products, knowing that there was an impending shortage of sugar, have, no doubt, supplied themselves with much larger advance stocks than would be normal, and the effect facing the household public is much the same as if there was deliberate hoarding.

Mr. HUSTED. I have been informed that candy manufacturers, for example, generally have laid in very large stocks, greatly in excess of their real needs, in anticipation of a possible scarcity or a great advance in price.

Mr. HOOVER. I have no precise data, but I have been told the same thing, and I should think it is natural.

Mr. HUSTED. It would be quite likely?

Mr. HOOVER. From such evidence as I have seen, I think that all of the sugar-manufacturing concerns are carrying considerable stocks.

Mr. HUSTED. Assuming, sir, that you possessed full power under the Lever Act to do whatever could be done by law to control this situation, what measure would you have taken to control the situation and to keep down the price of sugar in the United States?

Mr. HOOVER. Well, do you refer to the period of last July, or the period of last November, or to-day?

Mr. HUSTED. To all three, really—I would like to know your full views on the subject.

Mr. HOOVER. Well, last July I should have recommended to Congress that the Sugar Equalization Board acquire the Cuban crop; that its powers of control over distribution should be continued until the expiration of that crop year; if that had been accepted by Congress and carried out at that time, it would have resulted in practically the same price of sugar, or at somewhere near 1 cent advance over the price of last year, and we would have somewhere around 12½-cent sugar instead of 25 or 27 cents.

In November, after the opportunity to purchase the Cuban crop had gone by, I should have taken measures much the same as could be taken to-day, but they could have been taken then with, possibly, more effect.

And that is, that there are two directions in which something could be done: In the first case, the whole of the European world and our own merchants are competing for the purchase of sugar in neutral markets, and the natural effect of that competition is to produce

extraordinary prices. I understand that Cuban raw sugar is to-day quoted at from 19 to 20 cents. The measure there would involve some sort of cooperation or collaboration in action between the principal European governments and our own, and in accord with the Cuban Government, to secure a proper price to Cuba, and at the same time to suppress inordinate prices and profits.

And in that connection, I think you would find on investigation that the Cuban producers themselves, although they are profiting enormously by this situation, do not favor this price level, because, in the long run, it must stimulate the production of sugar, and it must stimulate speculative activity in their industry to a degree that they all—all of those of broad outlook—will regard as a disaster.

Mr. HUSTED. Does it not also affect industrial conditions in Cuba, which may be hard to correct hereafter?

Mr. HOOVER. That is one of the difficulties that they look forward to. Even yet, it may be possible to secure some international cooperation. It would have been possible to secure more cooperation, more effective cooperation, last November before so much of the crop had passed into speculative hands.

There is involved in that problem also the problem of the relative distribution of the sugar supplies from neutral markets as to the share of those supplies as between the countries who rely upon them. During the course of the war they had such an international arrangement by which we deliberately divided the production with a view to securing justice between the large consuming countries. And something on that that order needs to be carried out.

Beyond that, my own view is that the present price could be greatly reduced, and speculation could be, perhaps, almost extinguished if the luxury trades, that is, the manufacturers of non-essentials, were put on a reasonable rationing system today.

Mr. HUSTED. Can that be done today, in your opinion, sir, under existing conditions?

Mr. HOOVER. I am not sure whether it could be done outside the Lever Act; it certainly could be done inside of it. But I do not believe that any very large extension of power would be required in order to carry it out.

Mr. HUSTED. You understand, I assume, that the Lever Act is still in full force and operation?

Mr. HOOVER. Quite. But I assume that before a large, extensive, bureaucratic operation of that kind were undertaken one would want some assurance of continuous powers. The rationing of the nonessential trades is not an extraordinarily difficult process, because those trades again did cooperate in the most loyal manner during the war and I believe would cooperate today. The number of them are not particularly great. I imagine that they could be covered by, at the outside, 125,000 concerns.

It is not a problem like rationing an entire population; and they are able to substitute other sweetening materials, so that their business occupation is not materially injured if they can be all placed upon the same basis, so that they are not prejudiced one against the other in the raw material which they have to use.

The luxury trades apparently consume somewhere about one-third, or perhaps rather more than one-third, of our sugar. And if some measure of that kind were undertaken it would not only tend to reduce consumption to a point more near the available supply, but

the very fact of its undertaking would destroy anticipation in the hands of anyone who would speculate in sugar. No man is going out to speculate in sugar, or any other commodity, when the consumption is under control, because he can make no normal calculations: and I imagine that the very institution of such an arrangement would in itself tend to break down the speculative bubble that is now in progress.

Mr. HUSTED. What trades, other than the candy trade, do you consider a luxury trade in sugar?

Mr. HOOVER. Well, the place where the luxury consumption begins and ends is a very difficult problem, and it becomes a question of determination of the facts. One can say at once that the candy trades are a luxury, or at least a nonessential use of sugar, and can be reduced and other sweetening materials substituted. The same thing applies to the sweet drinks. But the manufacturer of condensed milk, for instance, which requires a considerable amount of sugar, is an essential, and the fruit canning trades, again, are an essential. But they, too, can be reduced and can use other sweetening materials, to some extent, if they are all put on the same competitive basis.

Mr. HUSTED. Do you think the sugar situation has reached such a point in the country that Government action to limit the quantity of candy produced would be justified?

Mr. HOOVER. May I ask you to repeat that question?

Mr. HUSTED. Do you think the sugar situation has reached such a stage in this country at the present time that governmental action limiting the production of candy in order to reduce the price of sugar would be justified?

Mr. HOOVER. Well, I would not put it in that way. I would not limit the production of candy; I would limit the use of cane and beet sugar in candy. That is not precisely the same thing, and, in fact, does not injure the industry materially.

Mr. HUSTED. What would you substitute? Would you substitute sirups for the sugar?

Mr. HOOVER. They found during the war a great number of substitutes—sirups of various kinds and glucose—and they found that by the use of rather more flour and other perfectly edible products the supply of sweetmeats could be maintained.

Mr. HUSTED. I have no further question to ask now. Mr. Whaley, do you desire to ask any questions?

Mr. HOOVER. I would like to emphasize that one point a little—that this increase of some 12 cents a pound in the consumer's sugar amounts to a very gigantic sum per annum, by way of tax upon the public, and it falls especially hard on the householder, because he is fighting not only the price but the priority in consumption that lies with the larger buyer; that the householder can not buy his supplies in advance, taking the country by and large, and therefore at some period later in the year he probably will find himself in great difficulties for this very essential household supply. In connection with household sugar it is always desirable to bear in mind that household sugar may, to some small percentage, also be a luxury, but in the main it is a positive essential, because we have built up the cuisine of our people for over a hundred years on the basis of sugar, so that it becomes a question of very profound importance for the household to keep up its supply. So that it is an essential in the house, and it is a nonessential in most other uses.

Mr. HUSTED. It has been stated that the per capita consumption of sugar in the United States has increased very much during the past year. What is your opinion about that?

Mr. HOOVER. Oh, there can be no question of doubt about that, that the consumption of sugar increased from some 72 pounds per capita the year before to 94 pounds last year—I would not be quite sure of those exact figures.

Mr. HUSTED. Have you any reason that you can assign for that?

Mr. HOOVER. Well, one reason, of course, is the larger prosperity of the country; and the consumption of sugar is always a fair index of prosperity. But prohibition has, no doubt, entered into it largely, because there is a great increase in the manufacture of sweet drinks, and I imagine that is a very material factor. And it is a little unfair to judge the consumption by that of the year before, because it was under a great deal of restraint then. But we have had an ascending consumption of sugar per capita in the United States over a great number of years, and that is in itself a mark of the rising standard of living.

Mr. HUSTED. Do you happen to have any figures which will show the percentage of the sugar consumed in the United States which is used in the sweet-drink business?

Mr. HOOVER. I, of course, have none of my own at the present moment, but the Sugar Board could provide you with figures accurately at the time these trades were under rations. At that time it was accurately determined as to every branch of the manufacturing and household consumption. The manufacturing consumption has, no doubt, increased some since that time, but at any rate, the figures are very accurate and can be had.

Mr. HUSTED. I think you stated in the course of your remarks that the sweet-drink industry had been largely increased since prohibition went into effect?

Mr. HOOVER. Yes, sir.

Mr. HUSTED. Have you any idea as to the extent of that increase?

Mr. HOOVER. No; I have not, as to volume.

Mr. HUSTED. Have you any questions, Mr. Whaley?

Mr. WHALEY. Mr. Hoover, as a matter of fact, there has been a large shipment of candies out of this country to foreign countries since the war, has there not?

Mr. HOOVER. I do not know.

Mr. WHALEY. You do not know as to that?

Mr. HOOVER. I have not followed that trade.

Mr. WHALEY. Let me ask you one other question: You spoke a little while ago about the Sugar Equalization Board and their powers of distributing sugar. As a matter of fact, the Sugar Equalization Board had no such power, but it came under the food-control act, did it not?

Mr. HOOVER. The Sugar Equalization Board was set up, as a commercial agency, to carry out the commercial policies of the Food Administration.

Mr. WHALEY. Yes.

Mr. HOOVER. The actual powers under which the distribution was regulated were derived from the Food Administration, under the Lever Act.

Mr. WHALEY. And that Food Administration went out of existence in July last?

Mr. HOOVER. Well, the powers, of course, were vested in the Attorney General.

Mr. WHALEY. But no purchasing power was vested in him, but simply the power to enforce the act so far as profiteers were concerned?

Mr. HOOVER. Well, I do not know, technically; it was my understanding that the powers under this act were transferred, but I may not be accurate in regard to that.

Mr. WHALEY. Let me ask you one more question: At the time the Attorney General fixed the price at 17 and 18 cents in Louisiana, the market price was 20 and 20½ cents. Do you think the action of the Attorney General would have any greater effect on the Cuban people than the market price in Louisiana at the time would have, so far as the stimulation of prices was concerned?

Mr. HOOVER. Well, so far as I followed the situation, I would rather question as to the market price being 22 cents, because the Sugar Equalization Board was still dominating the price of sugar—certainly, in the northeastern part of the country, and holding it around 10 or 11 cents.

Mr. WHALEY. But on the Louisiana Sugar Exchange, Mr. Zabriskie testified to the fact that sugar at that time was 20½ cents—

Mr. HOOVER (interposing). Well, he probably knew.

Mr. WHALEY. And I wanted to get your opinion as to this: Do you think the market price, at 20½ cents, would have had the same effect upon the Cuban planters as the fixing of the price by the Attorney General at 17 and 18 cents had?

Mr. HOOVER. Well, my impression would be that, if there had been a strong market at 22 cents, it would have had the same effect; but on the other hand, other sugars were being dealt in through the country on the old basis. I would not want to say where the most influence would lie, whether the most influence would lie on the reflection of the 12-cent sugar in the Northeast, or the 22-cent sugar in Louisiana.

Mr. WHALEY. But the claim is made, Mr. Hoover, that because the Attorney General fixed the price at 17 and 18 cents for 125,000 tons of sugar, out of a total crop of sugar of four and one-half million tons, the mere fixing of the price by him at 17 and 18 cents raised the price of the Cuban sugar, and that if he had left it at the market price, at 20½ cents, Cuban sugar would not have gone up. Now, what is your opinion as to that?

Mr. HOOVER. My opinion as to that—and this is just an opinion—

Mr. WHALEY (interposing). I understand; that is all.

Mr. HOOVER. My opinion is that, in fixing the price by the Government, and in giving a governmental authority to the price, he probably would have put the stamp of anticipation in the Cuban mind; but as to what would be the relative weight in the mind of the Cuban producer as between the three situations that we have now elaborated: (1) The Attorney General's official action; (2) the Louisiana market, and (3) the northeastern market—I can not tell.

Mr. HUSTED. The Cuban people interested in sugar were unquestionably familiar with the general provisions of the Lever Act; they knew that the Government had the power to control, and to punish for profiteering. That being the case, is it not a fair assumption that an excessive market price would not have so much effect upon them as a fixed official price, because in the case of an excessive market price, they did not know when the Attorney General would prosecute for profiteering under the Lever Act?

Mr. HOOVER. Well, I am afraid we are getting into pretty fine shades of anticipation; and I do not know that I could help on that.

Mr. WHALEY. Mr. Hoover, may I ask you one other question? Suppose you were acting as Attorney General at the time. With your knowledge of the sugar situation, would you have waited and prosecuted every sugar producer in Louisiana, 10,000 of them, and taken up each individual case to see whether the man had made a small profit and a reasonable profit, or would you have, in effect, fixed some standard by which they could act and hold them to that standard?

Mr. HOOVER. Well, if I had been the Attorney General—which is not a likely proposition—I should certainly not have attempted either of those operations, because price has never yet been fixed by mortal man or government by threat of a jail, and the only method by which price can be controlled is by the control of supply and demand, or by the actual business process of purchase and sale. I do not believe that any measure of that character, of a legalistic character, would have been effective; so I would not have attempted it if I had been Attorney General.

Mr. SUMNERS. Mr. Hoover, may I ask you a question? I appreciate that these questions, in a sense, are not quite fair to you—asking you what you would have done as the Attorney General of the United States under a hypothetical situation, or a situation hypothetically stated—but after all, that is all that this committee is investigating, as a matter of fact—I mean, as a matter of theory.

Now, this was the situation in Louisiana: The Louisiana sugar was the only sugar in the United States that was going to market under free competitive market conditions; and under free competitive market conditions it is in the testimony here that that sugar was bringing 20½ cents. It is further in the testimony that there were many inquiries from all over the United States directed to the Louisiana sugar producers, and offers to buy sugar at that price, and in some instances, possibly, above that price. The only authority that the Attorney General had under that circumstance was to prosecute for the violation of the profiteering law. Under the law then in effect the cane grower could sell his cane for any price that he could get, and could not be prosecuted under any law on the statute books of the United States, because he was selling an agricultural product.

Under the contract which the cane grower had with the sugar manufacturer in Louisiana the sugar manufacturer was to pay him, per ton, the value of 100 pounds of sugar on the free market, as quoted on the exchange in New Orleans.

Now, that was the situation at the time of this action on the part of the Attorney General of the United States. The Attorney General, acting through his local representative, the district attorney at New Orleans, had a conference with all the sugar growers, or their representatives, and the sugar manufacturers. He testified before this committee that in his judgment, after having gotten all the evidence he could, he could not sustain a conviction in any instance, probably, and if at all, in a very few instances, if they should sell sugar at 17 cents.

Now, this sugar produced by the independent cane growers—and there are about 10,000 of them—according to the testimony here, could have run wild on the market. And so he procured an agreement—he did very much, as I understand it, what you did, to a degree,

at least—he procured a consent or acquiescence on the part of all the sugar people in Louisiana, or practically if not quite all of them, that sugar would not be sold at above 17 cents. And he announced that sugar would not be sold at above 17 cents; and he announced to those people there, through their representatives, that there would be no prosecution if sugar should not be sold at a price above that. After that conference, after that announcement, preceded by a determination on the part of the Attorney General, it is in the testimony that sugar did not sell out of that crop, probably, at a price above 17 cents.

Now, then, it seems to be a question in the minds of some members of the committee, and possibly of some other Members of Congress, whether or not the action of the Attorney General, in announcing his determination, or his judgment—there being no fair price commission in Louisiana in operation at that time—that a conviction for selling at 17 cents could not be obtained and would not be undertaken, was responsible for the ills which the housewife of America is heir to when she goes to the grocery store and tries to buy sugar to-day.

Now, in your judgment, would the fact that the only free market in the United States at that time was reflecting 20½ cents per pound have as great a psychological effect upon the Cuban sugar planter as the fact that anybody who sold at above 17 cents would be prosecuted?

Mr. HOOVER. Well, I will admit that that, again, is a fairly difficult question to answer.

Mr. SUMNERS. Well, it is one that some members of our committee do not seem to have had any difficulty in determining.

Mr. HOOVER. Well, if the Attorney General was going to handle the Louisiana sugar situation on a purely legalistic basis, he may have been entirely correct at every step, for all that I know, because I would not attempt to pass upon a great office of that kind as to the validity of its step. The only criticism that I would pass on it would be on attempting to handle the matter on any legalistic basis instead of putting the matter upon a commercial basis and avoiding all of the difficulties.

Mr. SUMNERS. Yes; now, you will not pass on that. But as a man of much business experience, would you venture a guess as to the psychological effect upon the Cuban sugar producer as between an open market at 20½ cents, with some symptoms of running wild and running higher, and the action which cut the price from 20½ cents to 17 cents, and would not permit it to go higher?

Mr. HOOVER. I think you will have to go back to the question of whether the Attorney General was attempting to control the price of sugar or was attempting to control the profits on sugar. If he was attempting to control the price of sugar, then I think he ought to have done it on a business basis, and there certainly would have been a moderation in the mind of the Cuban producer if the Louisiana sugar had been bought by the Sugar Equalization Board and held at the normal price of 9 cents.

Mr. SUMNERS. Let me ask you one other question. Suppose the Cuban sugar grower should read in the newspapers that Louisiana sugar was worth 20½ cents a pound. And then suppose that instead of reading that he should read a notice in the paper that the Attorney General would prosecute anybody who sold Louisiana sugar at above 17 cents a pound. Which one of those things would have the most effect on his mind, the 17 cents or the 20½ cents a pound?

Mr. HOOVER. Well, I think you are asking me too much when you ask me to interpret the mind of the Cuban producer. [Laughter.]

Mr. SUMNERS. I think so myself.

Mr. HOOVER. I might say that I dealt with him for two years, and I had a great deal of trouble in trying to get at his state of mind.

Mr. SUMNERS. I agree thoroughly with the witness on that point. The only reason that I presumed to ask the question is that much of the testimony in the case is of this character.

Now, Mr. Hoover, coming to the constructive part of this inquiry, would you mind suggesting to the committee, and through the committee, to Congress, as to what we may expect from the next sugar crop, and if you do know the prospects, what the Congress or this Government probably ought to do to protect the people against the hazards of the future in that regard?

Mr. HOOVER. Well, it is entirely too early to forecast the crop of 1921; the earliest moment at which any real valid idea could be arrived at would be some time in July.

But taking it by and large, it is my impression that the world will be two or three years recovering its normal sugar production. There will be some recovery in Europe this year over the production of 1920, and there should be, under the high speculative price of sugar to-day, perhaps, some further stimulation in the production of cane sugar. But the production of cane sugar is, in itself, circumscribed by the volume of labor available, and cane sugar, even at 6½ or 7 cents is at a price which would probably stimulate all of the possible production, because the prime limitation is labor supply. So that the world's production of sugar will be, possibly, another two years in recovering. And then again, in considering this problem, we have the complexity of the buying power of Europe; and to every appearance, that may increase, steadily increase the demand even over its present commitments. One, of course, is dealing with a number of contrary currents; but my own impression is—and I only give it as an impression—that we shall see a shortage of sugar for another two years to come.

Mr. SUMNERS. Do you believe that conditions would reach a normal state, in regard to that and other matters, more quickly if they be permitted to operate freely, or do you think that there is still need, not only from an economic standpoint, but from the standpoint of statemanship, of a further arbitrary control over those things which constitute some of the prime necessities of life?

Mr. HOOVER. Well, my impression is that in those commodities where there is an actual and visible famine, the State must take some interest in the protection of the people, because there is that fearful inequality of distribution based on the ability to buy. And I can see no other solution. The problem of stimulation to production is in itself a question of relative price. The impression that I would have at this moment, without further investigation, would be that sugar at 15 cents a pound, for instance, or 16 cents, would stimulate all of the possible production that the world's labor could circumscribe; in other words, that the price beyond that adds nothing to productivity. Of course, it is contended by great numbers of economists—and you will find it so in this country and elsewhere—that the best control of distribution, even in famine, is price. But I believe that we have reached a social view in the world that goes far beyond that conception.

Mr. HUSTED. Have you any questions, Gov. Boies?

Mr. BOIES. Is it not your opinion that the fact that the Attorney General fixed the price of Louisiana sugar at 17 and 18 cents virtually took the hand of the Government off of the price of sugar, and it ran wild all over the country from that time on?

Mr. HOOVER. Well, I think you are rather asking me to state a fact on which I am not prepared to venture, because I am not sufficiently familiar with the details of what happened to the sugar market throughout the country following that act.

Mr. BOIES. Then how do you account for the fact that sugar sold upon the market in Louisiana at 20 and 22 cents per pound, and the Attorney General fixed the price at 17 and 18 cents, and then the Cuban sugar immediately shot up?

Mr. HOOVER. How do I account for it?

Mr. BOIES. Yes.

Mr. HOOVER. Well, I assume that the Cuban sugar rose in sympathy.

Mr. BOIES. Well, rose in sympathy when the price was put down?

Mr. HOOVER. I should think so.

Mr. BOIES. Then that was based upon the stability of that price as fixed by the Attorney General, was it not?

Mr. HOOVER. Well, I do not know that I quite understand what you mean.

Mr. BOIES. Well, a Government pronouncement of the price of the Louisiana crop?

Mr. HOOVER. Well, to repeat what I said before, it is my belief that it would have an influence on the mind of the Cuban producer—but I would hate to undertake to interpret that.

Mr. BOIES. Well, is it not your opinion also that fixing this price of the Louisiana sugar at 17 and 18 cents caused a great amount of Cuban sugar to come into this country and be sold as Louisiana sugar all over the country?

Mr. HOOVER. Well, that is a matter of fact that I would not know; it could be determined.

Mr. BOIES. Would it not, in your judgment, be a natural result?

Mr. HOOVER. Yes; it would be a natural tendency, but whether it actually took place as a fact, I do not know.

Mr. SUMNERS. Mr. Hoover, do you think that the market is still reflecting the sympathy which attached to the action of the Attorney General in dealing with about 2 per cent of the sugar crop away back in November?

Mr. HOOVER. I should think that the market price to-day is reflecting the world situation, plus speculation.

Mr. SUMNERS. Is it not reasonable to suppose that the world situation was operating at the time the Attorney General acted in Louisiana?

Mr. HOOVER. Well, of course, this type of question is extremely hypothetical.

Mr. SUMNERS. I understand that.

Mr. HOOVER. And it really does not get us anywhere that I can see.

Mr. HUSTED. When sugar was selling at 6½ cents, of course the world shortage was not operating very strongly, as they were willing to sell the entire Cuban crop at 6½ cents to the Sugar Equalization Board.

Mr. HOOVER. At that time Cuba had not yet realized the world situation, and the Sugar Equalization Board had the information

two months ahead of the general Cuban producer. We must always bear that in mind.

Mr. WHALEY. And also that the Cuban crop fell off that year too, did it not, by about a million and a half tons?

Mr. HOOVER. I believe there is a considerable reduction in the crop of this year from the preceding year.

Mr. WHALEY. Let me ask you this question: Does the Cuban price reflect the price of the Louisiana crop, or is it more affected by the sugar-beet industry?

Mr. HOOVER. Well, I would hesitate to say what is the dominating crop. The Cuban crop is the largest single crop, and probably has the largest influence in the world's market. There is in the largest crop the widest margin for fluctuation in production. For instance, Cuba is probably about 400,000 or 450,000 tons less in its production this year than last year; and, obviously, that fluctuation of around 400,000 tons must have a more profound effect upon the world's market than any fluctuation that could take place in Louisiana, with its comparatively small crop. But as to what the predominating crop is I do not think anyone could say.

Mr. WHALEY. Does not the Cuban crop come more in competition with the beet-sugar crop than with the Louisiana sugar crop? What I mean is that the Louisiana crop, as I understand it, comes in in November or December and the Cuban sugar crop comes in after the 1st of January, and the sugar-beet crop comes in about that time also, according to the testimony here.

Mr. HOOVER. Well, that would be the case in the face of a world shortage, when each year was finished off with a shortage of sugar. If there was a normal supply of sugar, then the Louisiana crop would bear its relation to the Cuban crop; but is does happen that, if there is a shortage of sugar that shortage is most acute in the late fall months, and the Louisiana sugar comes into that period and gets the advantage. It is a phenomenon that had never happened prior to 1916, but with the continuous shortage since then it has been happening.

Mr. HUSTED. Throughout the year 1919 the Government possessed, and still possesses, does it not, all the power to purchase or distribute sugar that it possessed at any time since the declaration of war in 1917?

Mr. HOOVER. That is the case up until the declaration or ratification of peace.

Mr. HUSTED. All of the powers?

Mr. HOOVER. I understand none of the war powers have been abrogated yet.

Mr. WHALEY. But the Lever Act goes out of effect with the declaration of peace?

Mr. HOOVER. That is right.

Mr. WHALEY. And the Food Administration wound up last July, anticipating that the Senate—

Mr. HOOVER. Yes.

Mr. WHALEY (continuing). Would do the sensible thing and ratify the peace treaty? [Laughter.]

Mr. Husted. With all proper American reservations. [Laughter.] I think that is all, Mr. Hoover, and we are very much obliged to you.

Mr. HOOVER. Thank you.

(Thereupon, at 3 o'clock p. m., the subcommittee adjourned.)

EXHIBITS.

EXHIBIT A.

GEORGE A. ZABRISKIE,
*President Equalization Board,
112 Wall Street, New York City.*

DEAR SIR: In pursuance of the informal discussions conducted between the subscribers, speaking by authority for the Cuban Government, the members of the Equalization Board, as the purchasers and distributors of Cuba's sugar crop for the existing year, we deem it expedient to submit for your information, and as far as you may determine, for your action in continuing the control and disposition of Cuba's crop of sugar for the ensuing year 1920.

In presenting our suggestions, while acting directly for the Cuban sugar producer, we accept the grave responsibility of speaking scarcely less for the American consumer, and for that vast army of foreign consumers whose needs are of such concern to the American Government.

Fortunately for every interest involved the great bulk of sugar required by importing countries is provided by the island of Cuba—but she takes no note of this “coign of vantage”—on the other hand, the island Republic, its hacendados and farmers, and manufacturers of sugar tender through its own Government, providing it meets with the consent and cooperation of the American Government, the entire wealth of her production under such terms as may be agreed upon by the contracting parties at a price moderate, but compensating to the producer and well within the economic reach of the consumer.

This is the fundamental basis upon which our tender is made.

If accepted through the continued life and active participation of your respected board—or similar body—the whole question would be greatly simplified. If, on the contrary, the opportunity to serve—not the American people alone but the universal welfare—is for any reason, technical or otherwise, not availed of through one medium or another, there is not a community anywhere in America, in Europe, or Asia that will not feel the consequences of our failure to provide a stable price for this most necessary article of human consumption.

Cuba approaches this question with full recognition of her relations to the American people and their Government, and in the spirit of comity and desire for a complete understanding.

We await with unflagging interest your reply, the subject of which we are assured is to you, as it is to us, the most momentous in the world's economy of to-day.

With assurances of great respect,
Faithfully, yours,

R. B. HAWLEY,
MANUEL RIONDA.

EXHIBIT B.

AUGUST 14, 1919.

DEAR MR. PRESIDENT: The Sugar Equalization Board is in receipt of a letter under date of July 29 from the Cuban commissioners, tendering to the American Government the Cuban sugar crop for 1920.

We deem it advisable that the Cuban commission should be advised at an early date as to whether our Government proposes to consider this tender. The authority of this board does not extend beyond the purchase and distribution of this year's sugar crop, and we venture to suggest the control of sugar for the coming year must now be determined.

I am inclosing herewith a memorandum setting forth the sugar situation as it exists and such information as we possess concerning the prospects for

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the coming year and other points for your consideration in advising this board as to the policy you desire to be pursued.

The officers of the board are prepared to furnish you with any further information that you may desire.

UNITED STATES SUGAR EQUALIZATION BOARD (INC.),
_____, *President.*

The PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

EXHIBIT C.

MEMORANDUM.

The United States Sugar Equalization Board (Inc.) was incorporated on the 12th day of July, 1918, under the laws of the State of Delaware. The organization of the equalization board was accomplished under the approval of the President of the United States, who subscribed for \$5,000,000 of its capital stock (being the entire stock issued), which is now and has at all times been held for and on behalf of the United States.

The plan of the Food Administration for regulation and control of the price of sugar and the distribution thereof for the year 1917-18 in the United States in view of the necessity for stimulation of production of domestic sugar was not considered entirely sufficient for the year 1918-19, and thereupon it was concluded that the equalization board (under the approval of the President) should endeavor to purchase the entire crop of 1918-19 Cuban sugar and thereby insure a regular and sufficient supply of sugar to the people of the United States at a reasonable price under then existing conditions.

It must at all times be borne in mind that Cuban sugar is the main reliance of the people of the United States for their annual sugar supply, and while beet sugar and Louisiana cane is produced in the United States, and the United States gets sugar from Hawaii and other of its possessions, yet the sugar from all such sources is entirely insufficient to meet the normal requirements of the people of the United States, and Cuban sugar has been and, so far as can now be seen, will remain the largest single source of supply for the people of the United States for their annual requirements.

On the 24th day of October, 1918, the equalization board entered into a contract with representatives of the Cuban Government and agents of various Cuban producers of sugar in the island of Cuba under which the equalization board purchased substantially all the raw sugar produced in the island of Cuba during the crop season of 1918-19, a copy of which contract is hereto attached, marked "Exhibit A."

The Sugar Equalization Board being duly authorized by said contract, resold one-third of the Cuban raw sugar purchased by it as aforesaid, to the royal commission of the United Kingdom, for the use of it and its allies and at the same price at which the raw sugar was purchased under the contract aforesaid. A copy of the contract of sale to the royal commission is hereto attached, marked "Exhibit B."

In furtherance of its plan of securing regular and sufficient supplies of sugar to the American people and the Army and Navy, at a reasonable price, even during the disorganized period of world trade, the equalization board, on October 24, 1918, entered into a contract with the refiners of sugar in the United States and Herbert Hoover, as United States Food Administrator, under which the refiners agreed to purchase, and the equalization board agreed to sell to the refiners their entire requirements of raw sugar for the operation of their refineries for the period beginning October 24, 1918, and ending December 31, 1919, and the refiners agreed not to purchase any raw sugar from any person, country, or source of supply, during said period, other than from the equalization board. The price to be paid by the refiners for the raw sugar is 7.28 cents per pound, 96° average polarization (duty, if any, paid) delivered at refinery, and the refiners to sell all sugar refined by them at a price not more than 1.54 cents per pound wholesale of refined sugar, f. o. b. refinery, above the price of 7.28 cents per pound paid to the equalization board, the result being a wholesale price of sugar throughout the United

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States of not exceeding 9 cents per pound at refining points. A copy of said contract is hereto attached marked "Exhibit C."

It will be observed that under the terms of this contract such refiner agrees to conduct his or its export business under the direction of the equalization board and to export or distribute to the domestic trade such proportion of its refined sugars as the equalization board may direct.

This contract was submitted to the Attorney General and his opinion was received to the effect that the contract was not in violation of any law of the United States.

By their terms, the three contracts aforesaid expire on the 31st day of December, 1919. In view of the fact that the equalization board was incorporated and entered into the contracts aforesaid with the approval of the President of the United States, and that the entire stock of the equalization board is held by him for and in behalf of the United States, the members of the board of directors of the equalization board deem it proper to submit to the President this memorandum.

1. By its purchase of the Cuban raw sugar equalization board has been able to assure, up to this time, to the American people a regular and sufficient supply of refined sugar, and at a wholesale price not exceeding 9 cents per pound at refining points, being the lowest price for refined sugar in any country in the world. Occasional and temporary local shortages have occurred, due principally to the interruption of regular shipments of raw sugar from Cuba during the recent marine strike, which occurred at the period of highest consumption.

2. Out of the price at which the raw sugar was sold to the refiners, the equalization board has, up to this time, accumulated reserves of about \$30,000,000, which belong to the United States, and but for the contracts aforesaid the equalization board believes that the price for refined sugar to the American people would have been much higher and much more would have gone to the Cuban producers, the refiners, or to speculators, at the expense of the American people.

3. There is to-day a world shortage of sugar. Demands are made from Europe and even from Japan for sugar which it is impossible to fill without creating a serious shortage in the United States, and from the information that the equalization board has been able to secure, it seems probable that the world sugar shortage for 1920 will be more acute than for the year 1919.

4. A copy of the letter of July 29 from the Cuban commission tendering to the United States Government the Cuban crop for 1920 is attached hereto marked "Exhibit D."

Conditions are so abnormal and the prospect of securing a regular supply of sugar at a reasonable price for the people of the United States for the year 1920 is so uncertain that the equalization board concludes, from a commercial point of view, that its duty requires it to suggest to the President that, in reply to the communication from the representatives of Cuban producers, negotiations be entered into for the purpose of securing the sugar required for the necessities of the people of the United States for the year 1920 from Cuba under somewhat the same arrangements as the equalization board was able to make with the Cuban commissioners and producers and the refiners in the United States for the year ending December 31, 1919. This suggestion is made entirely from our consideration of the sugar situation from the standpoint of assuring the American people a regular supply at a reasonable price, and, of course, is subject to the general policy of the Government as to the advisability of continuing control and regulation of food commodities.

EXHIBIT D.

From Dr. Taussig:

MEMORANDUM.

I regret not to be able to reach the same conclusion as the other members of the Sugar Equalization Board. I believe that no negotiation should be entered in with the Cuban producers, and that the regulation and restriction of sugar prices should cease with the close of the present arrangement, December 31.

It is true that the evidence now available points to a shortage of sugar in 1920 and to a possibility of prices in that year as high as those of 1919, or even higher. But no certain conclusions can be reached about the future. Prices of sugar will be affected not only by the incoming supplies, but by the general political and monetary conditions of the whole world. The general level of prices in the United States and in other countries may be lower than it is now. Consumption may be reduced by changes in general business conditions or by restrictive measures in importing countries. The present recommendation of the board is that the United States (through the board) should repeat a huge commercial venture, in the hope of protecting consumers and of incurring no loss, but with the clear possibility of having to assume a loss. The operation would involve a guarantee by the Government of extremely high profits to the Cuban sugar planters, and also a virtual guarantee of similar profits to our beet-sugar producers as well as to the planters of Louisiana, Hawaii, and Porto Rico. It would necessarily lead to contracts with the sugar refiners which would guarantee good profits to them also. No doubt in the absence of Government regulation all these producers might make profits higher still; but prediction as to the outcome one way or the other can not be made with any confidence. Business of this kind may be undertaken by the Government under stress of war, but should cease now that we are at peace.

Moreover, the regulation of the price of sugar can not in my judgment stand alone. The whole relation of government to industry in time of peace is involved. If the price of sugar is to be specifically controlled, so should that of bread, of meat, of clothing. In the main we must look for a remedy to the natural development of production and to the return of the entire world to normal financial and economical conditions.

EXHIBIT E.

SEPTEMBER 20, 1919.

THE PRESIDENT OF THE UNITED STATES,

Washington, D. C.

MY DEAR MR. PRESIDENT: Referring now to my letter to you of the 14th day of August, inclosing the report from the board of directors of the United States Sugar Equalization Board (Inc.), and also referring to you a letter from the representatives of the Cuban Government and producers of sugar, in reference to the Cuban crop of raw sugars for the year 1919-20, I desire to respectfully bring to your attention the fact that the time is fast approaching, if it has not arrived, when we will be unable to control the Cuban crop of sugar for the year 1919-20 unless action is taken at once.

I am informed that a considerable tonnage of Cuban sugars of the crop of 1919-20 has already been sold, and it seems entirely probable that the representatives of the Cuban sugar will withdraw their proposition unless some action is taken at once.

May I, therefore, respectfully ask an early determination of the policy which the United States Sugar Equalization Board (Inc.) is to pursue with reference to the matter referred to in my letter of the 14th day of August. I know the pressure you are under, and nothing but imperative necessity could make me add this matter to your burdens.

Very respectfully,

GEORGE A. ZABRISKIE, *President.*

EXHIBIT E.

THE WHITE HOUSE,

Washington, September 22, 1919.

MY DEAR SIR: Allow me to acknowledge the receipt of your letter of September 20 and to say that I shall bring it to the attention of the President at the first favorable opportunity.

Sincerely, yours,

RUDOLPH FORSTER,
Executive Secretary.

Mr. GEORGE A. ZABRISKIE,

President U. S. Sugar Equalization Board (Inc.).

111 Wall Street, New York City.

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EXHIBIT G.

THE CUBAN-AMERICAN SUGAR CO.,
New York, September 22, 1919.

Mr. GEORGE A. ZABRISKIE,
Chairman Equalization Board, New York City.

DEAR SIR: We beg leave to refer to our letter bearing date of July 29, 1919, copy of which we inclose. As you will observe by its terms, we were pleased at that time to inform your respected board that the Republic of Cuba, its haciendados and farmers and manufacturers of sugar, acting through us in a representative capacity, were willing to tender to you or a similar body the entire production of Cuba on such terms as might be agreed upon by the contracting parties, at a price moderate but compensating to the producer and well within the economic reach of the consumer, always provided that this offer met with the full consent and cooperation of the United States Government.

In the interval that has transpired we have awaited your answer, confidently believing that the United States Government would undertake the continued control of sugar, and every interest concerned, especially the American consumer, would experience the advantage of a stabilized market. Unfortunately, the logic of the situation has not impressed the Government, or in keeping with its traditional policy—the war being over—it is thought best to permit the market to be ruled by the natural law of supply and demand.

While we had hoped for a different conclusion to the negotiations put forward by Cuba, with the wealth of production represented by her producers, we reluctantly accept the situation now existing and return the authority under which we were acting. The spirit of the times is so fraught with speculation that wide fluctuations must inevitably ensue, but whatever developments may occur, speaking now only for ourselves, and whatever influence we may exert, we shall employ our best efforts in helping to maintain a conservative situation.

With assurances of great respect,
Faithfully, yours,

R. S. HAWLEY.
MANUEL RIONDA.

EXHIBIT H.

SEPTEMBER 23, 1919.

The PRESIDENT OF THE UNITED STATES,
The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: The inclosed copy of a letter from Messrs. Hawley and Rionda, representing the sugar producers of Cuba, is self-explanatory, and in view of the fact that about one-third of the Cuban crop of next year has since been disposed of for export to countries other than the United States, we believe that the situation is out of hand.

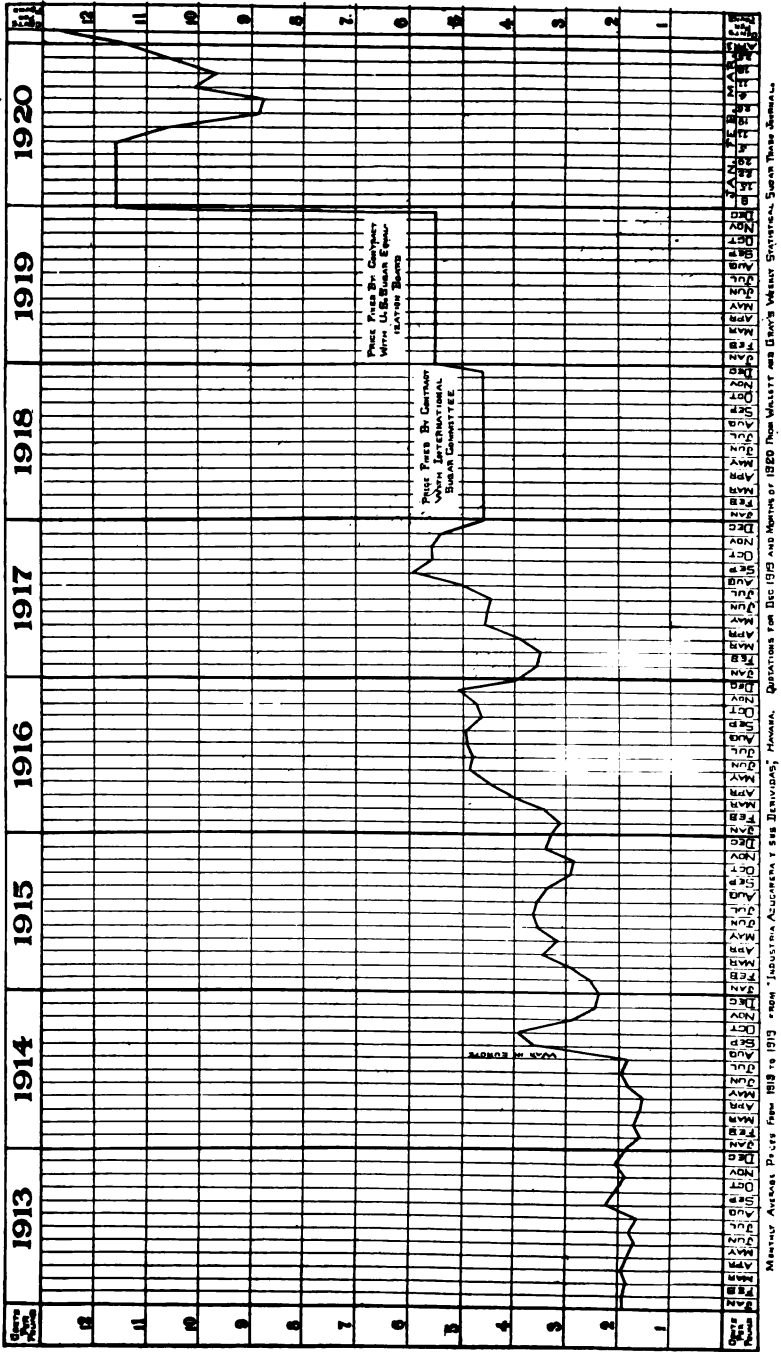
Therefore in order to protect the interests of the American consumer we have advised American refiners as to conditions, so that they may purchase raw sugar as per prewar times.

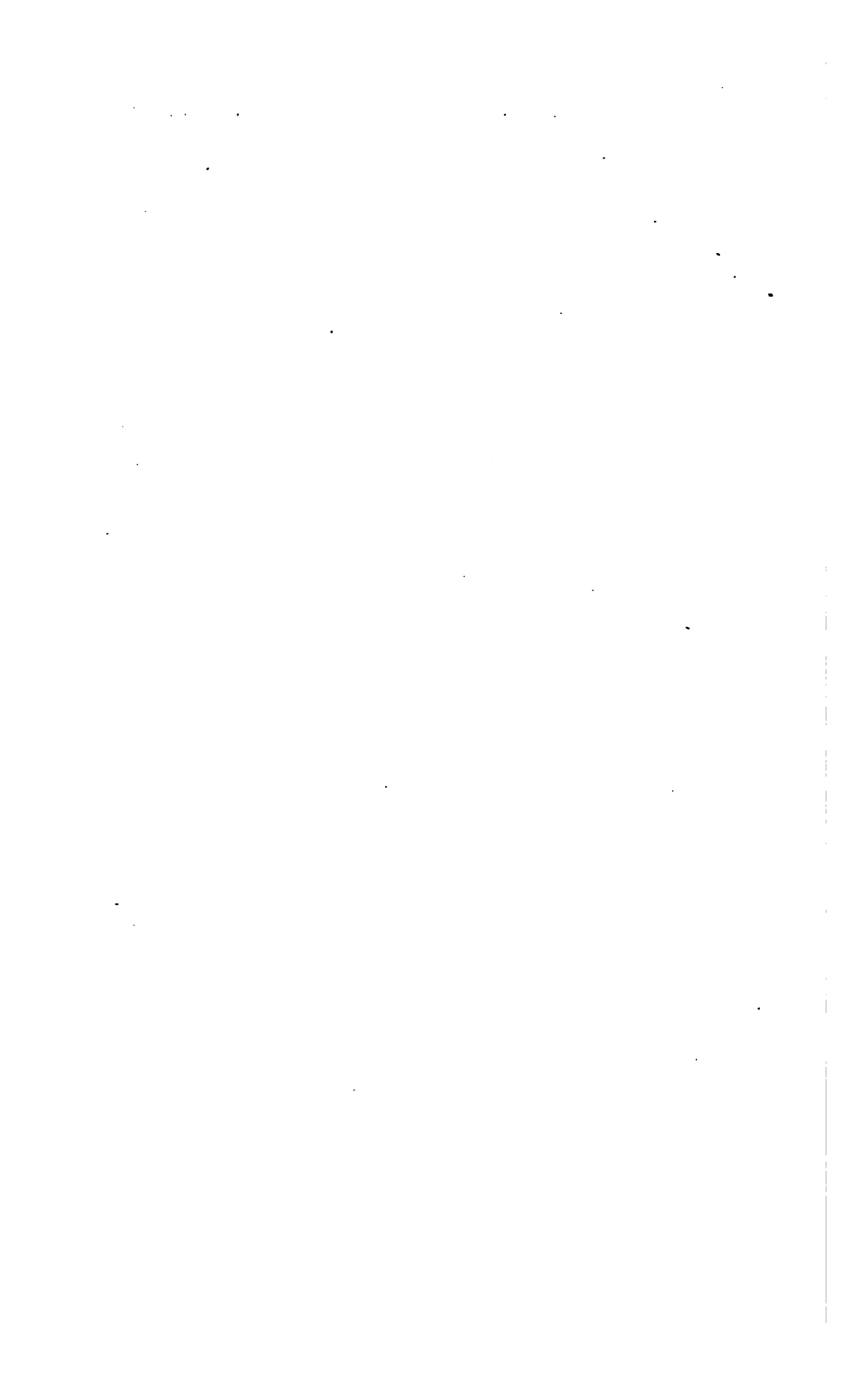
Very respectfully,

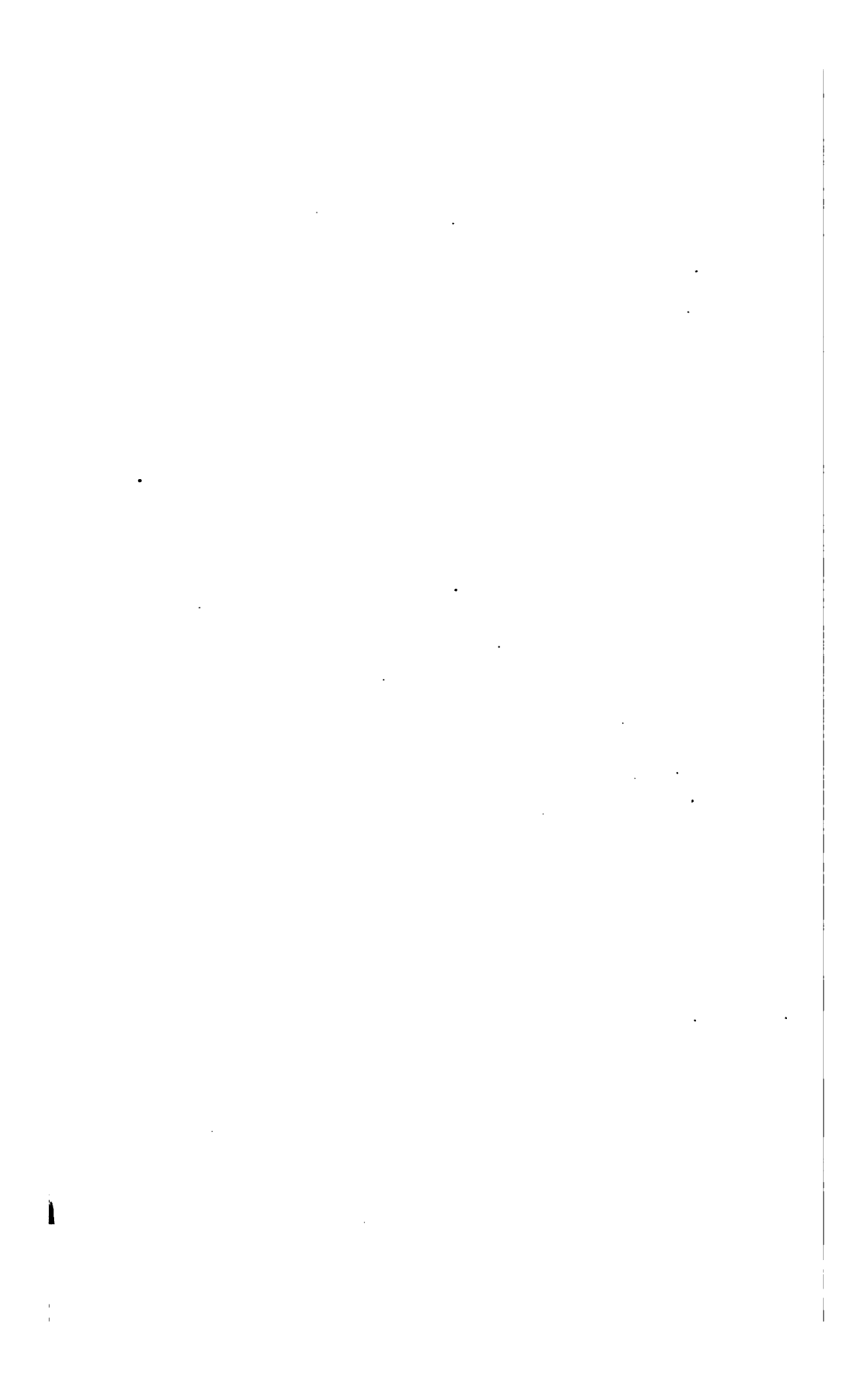
GEORGE A. ZABRISKIE,
President United States Sugar Equalization Board (Inc.).

EXHIBIT I.

Average Price Of 96° Cuban Centrifugal Sugar In Havana, By Months, 1913-1920









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